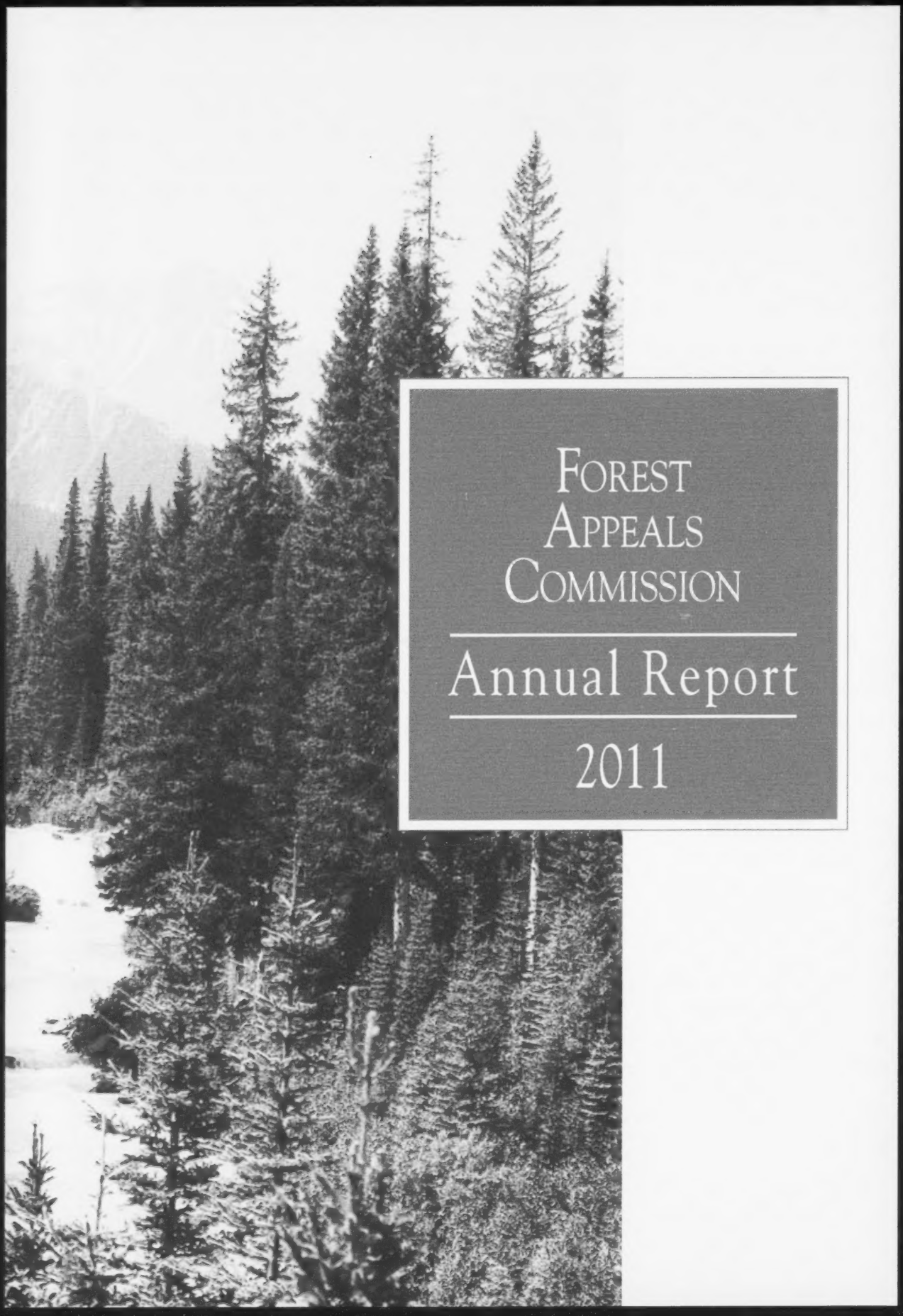

Forest Appeals Commission

Annual Report

2011

BRITISH COLUMBIA

Forest Appeals Commission

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The Honourable Steve Thomson
Minister of Forests, Lands and Natural Resource Operations
Parliament Buildings
Victoria, British Columbia
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Dear Ministers:

I respectfully submit herewith the Annual Report of the Forest Appeals Commission for the period of January 1, 2011 to December 31, 2011.

Yours truly,

Alan Andison
Chair
Forest Appeals Commission

AR 2011

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Message from the Chair

I am pleased to submit the seventeenth Annual Report of the Forest Appeals Commission.

The Year in Review – Appeals

During the past year, the Commission has continued to work towards reducing the number of appeals that proceed to a hearing. I am pleased to note that while 71 appeals were active during the reporting period, 66% of those appeals were closed by the year's end. Of those appeals closed during the year, 30 were withdrawn or resolved which meant that they did not require a hearing. Included in this 30 were several outstanding stumpage appeals. These appeals had been held in abeyance to allow the parties time to negotiate, and were ultimately settled without the need for a hearing.

Of the appeals that were heard and decided by the Commission during 2011, many of them involved complex legal and factual issues and matters of significant interest to the public, the forest industry and the Government such as when there is a duty to consult with First Nations, how to value Crown timber damaged or destroyed by wildfire, and the amount of stumpage that licensees are obligated to pay when harvesting Crown timber.

Efficiencies and Cost Reduction

As Chair of three tribunals, the Commission, the Environmental Appeal Board and the Oil and Gas Appeal Tribunal, I have appreciated the various benefits and actively encouraged the "clustering" of tribunals with similar processes and/or mandates. The Commission's office now supports a total of eight administrative tribunals. This model has numerous benefits, not only in terms of cost savings, but also in terms of shared knowledge and information. Having one office provide administrative support for several tribunals gives each tribunal greater access to resources while, at the same time, reducing costs and allowing the tribunals to operate independently of one another.

Adding to these efficiencies, we are currently developing a number of policy documents to make the appeal process more accessible and understandable to the public and are improving our information systems to facilitate further access and information sharing. The Commission is also considering new appeal procedures that may further facilitate the early resolution of appeals. Should an appeal proceed to a hearing, the new procedures will ensure that the hearing proceeds as quickly and efficiently as possible.

Court Decisions Impacting the Commission

When an appeal is not resolved prior to a hearing and the Commission issues its decision on the appeal, the parties have the right to then appeal the decision to the BC Supreme Court. This can be a lengthy and costly process, in part, because the parties

must spend time addressing the standard of review which includes an assessment of the Commission's expertise over the subject matter and the law at issue. The question is important because it shapes how much the court will "defer" to the Commission's findings. This year, there were two judgments that help clarify this matter.

In *Hegel v. British Columbia (Forests)*, 2011 BCCA 446, the British Columbia Court of Appeal confirmed the expertise of the Commission in forestry matters and confirmed that the Commission's decisions are to be given deference by the courts. This outcome is buttressed by the Supreme Court of Canada's judgment in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, [2011] 3 S.C.R. 654, which applies to administrative tribunals generally. It is my hope that these two judgments have helped to settle the standard of review question and that the long term effect will be to reduce the number of appeals to the courts from Commission decisions or, at a minimum, to reduce the time and expense of court proceedings in the future.

Commission Membership

The Commission's membership experienced some changes to its roster of qualified professionals during the past year. I am very pleased to welcome two new members to the Commission who will complement the expertise and experience of the outstanding professionals on the Commission. These new members are Jagdeep Khun-Khun and Cindy Derkaz.

I am very fortunate to have on the Commission a wide variety of highly qualified individuals including professional biologists, foresters, agrologists, engineers, and lawyers with expertise in the areas of natural resources and administrative law, and mediation. All of these individuals, with the exception of the Chair, are appointed as part-time members and bring with them the necessary expertise to hear matters ranging from timber valuation to aboriginal rights.

Finally, I would like to take this opportunity to thank the members of the Commission and the staff for their continuing commitment to the work of the Commission.

Alan Andison
Chair

Introduction

The Forest Appeals Commission is an independent tribunal that was established under the *Forest Practices Code of British Columbia Act* (the "*Code*"), and is continued under the *Forest and Range Practices Act*. The information contained in this report covers the twelve-month period from January 1, 2011 to December 31, 2011. It covers the structure and function of the Commission and how the appeal process operates. This report also contains:

- the number of appeals initiated during the reporting period;
- the number of appeals completed during the reporting period (i.e., final decisions issued);
- the resources used in hearing the appeals;
- a summary of the results of appeals completed in the reporting period;
- an evaluation of the review and appeal processes; and,
- recommendations for amendments to the legislation, from which it hears appeals.

Finally, a selection of the decisions made by the Commission during the reporting period has been summarized, legislative amendments affecting the Commission are described, and the relevant sections of applicable legislation are reproduced.

Decisions of the Commission are available for viewing at the Forest Appeals Commission office, on the Commission's website, and at the following libraries:

- Legislative Library;
- University of British Columbia Law Library;
- University of Victoria Law Library;
- British Columbia Courthouse Library Society; and
- West Coast Environmental Law Association Law Library.

Detailed information on the Commission's policies and procedures can be found in the Forest Appeals Commission Procedure Manual, which may be obtained from the Commission office or viewed on the Commission's website. If you have questions, or would like additional copies of this report, please contact the Commission at:

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The Commission

The Forest Appeals Commission is an independent administrative tribunal, which provides a forum to appeal certain decisions made by government officials under the *Forest Act*, the *Forest and Range Practices Act*, the *Private Managed Forest Land Act*, the *Range Act* and the *Wildfire Act*. The Commission is also responsible for providing the Lieutenant Governor in Council (Cabinet) with an annual evaluation of appeal and review processes, and with recommendations for amendments to forest legislation and regulations respecting reviews and appeals.

The Commission makes decisions respecting the legal rights and responsibilities of parties that appear before it and decides whether the decision under appeal was made in accordance with the law. Like a court, the Commission must decide appeals by weighing the evidence, making findings of fact, interpreting the legislation and common law, and applying the law and legislation to the facts.

In carrying out its functions, the Commission has the power to compel persons or evidence to be brought before the Commission. The Commission also ensures that its processes comply with the common law principles of natural justice.

Appointments to the Commission and the administration of the Commission are governed by the *Administrative Tribunals Appointment and Administration Act*.

Commission Membership

Commission members are appointed by the Lieutenant Governor in Council (Cabinet) under section 194(2) of the *Code*. The members appointed to the Commission are highly qualified individuals, including professional foresters, professional biologists, professional engineers, professional agrologists and lawyers with expertise in the areas of natural resources and administrative law. These members apply their respective technical expertise and adjudication skills to hear and decide appeals in a fair, impartial and efficient manner.

The members are drawn from across the Province. Commission membership consists of a full-time Chair, one or more part-time Vice-Chairs, and a number of part-time members. The length of the initial appointments and any reappointments of Commission members, including the Chair, are set out in the *Administrative Tribunals Appointment and Administration Act*, as are other matters relating to the appointees. This Act also sets out the responsibilities of the Chair.

During the 2011 reporting period, the membership of the Commission changed. Two new members were appointed. During the year, the Commission consisted of the following members:

MEMBER	PROFESSION	FROM
Chair		
Alan Andison	Lawyer	Victoria
Vice-Chairs		
Gabriella Lang	Lawyer (Retired)	Campbell River
Robert Wickett	Lawyer	Vancouver
Members		
R. O'Brian Blackall	Land Surveyor	Charlie Lake
Carol Brown	Lawyer/CGA/Mediator	Sooke
Robert Cameron	Professional Engineer	North Vancouver
Monica Danon-Schaffer	Professional Engineer	West Vancouver
Cindy Derkaz (from October 20, 2011)	Lawyer (Retired)	Salmon Arm
W. J. Bruce Devitt	Professional Forester (Retired)	Victoria
Tony Fogarassy	Professional Geoscientist/Lawyer	Vancouver
Les Gyug	Professional Biologist	Westbank
James Hackett	Professional Forester	Nanaimo
R.G. (Bob) Holtby	Professional Agrologist	Westbank
Jagdeep S. Khun-Khun (from October 20, 2011)	Lawyer	Vancouver
Blair Lockhart	Lawyer/Geoscientist	Vancouver
Ken Long	Professional Agrologist	Prince George
David Searle, C.M., Q.C.	Lawyer (Retired)	North Saanich
Douglas VanDine	Professional Engineer	Victoria
Reid White	Professional Engineer/Professional Biologist (Retired)	Telkwa
Loreen Williams	Lawyer/Mediator	West Vancouver

Administrative Law

Administrative law is the law that governs public officials and tribunals that make decisions affecting the rights and interests of people. Administrative law applies to the decisions and actions of statutory decision-makers who exercise power derived from legislation. The goal of this type of law is to ensure that officials make their decisions in accordance with the principles of procedural fairness/natural justice by following proper procedures and acting within their jurisdiction.

The Commission is governed by the principles of administrative law and, as such, must treat all the parties involved in a hearing before the Commission fairly, giving each party a chance to explain its position.

Appeals to the Commission are decided on a case-by-case basis. Unlike a court, the Commission is not bound by its previous decisions; present cases of the Commission do not necessarily have to be decided in the same way that previous ones were decided.

The Commission Office

The office provides registry services, legal advice, research support, systems support, financial and administrative services, training, and communications support for the Commission.

The Commission shares its staff and its office space with the Environmental Appeal Board, the Oil and Gas Appeal Tribunal, the Community Care and Assisted Living Appeal Board, the Health Professions Review Board, the Hospital Appeal Board, the Industry Training Appeal Board, and the Financial Services Tribunal.

Each of the tribunals operates independently of one another. Supporting eight tribunals through one administrative office gives each tribunal access to resources while, at the same time, cutting down on administration and operation costs. In this way, expertise can be shared and work can be done more efficiently.

Commission Resources

The fiscal 2011/2012 budget for the Forest Appeals Commission was $359,000.

The fiscal 2011/2012 budget for the shared office and staff was $1,305,000.

Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Hearings are open to the public, and information provided to the Commission by one party must also be provided to all other parties to the appeal.

The Commission is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act. If information is requested by a member of the public regarding an appeal, that information may be disclosed, unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act*.

Parties to appeals should be aware that information supplied to the Commission will be subject to public scrutiny and review.

In addition, the names of the parties in an appeal appear in the Commission's published decisions which are posted on the Commission's website, and may appear in this Annual Report.

The Appeal Process

Overview

The appeal process begins with a notice of appeal filed against a particular decision of a statutory decision-maker. To determine what decisions are appealable to the Commission, who can appeal the decisions, the time for filing an appeal, whether the appealed decision is stayed pending an appeal, or what the Commission's decision-making powers are with respect to the appeal, including the power to award costs, one must consult the individual statutes and regulations which provide the right of appeal to the Commission; specifically, the *Forest and Range Practices Act*, the *Forest Act*, the *Private Managed Forest Land Act*, the *Range Act* or the *Wildfire Act*. A brief description of these statutes and their respective appeal provisions is provided under the next heading.

As will be noted in the descriptions of the statutes below, one unique feature of two of the statutes is the participation of the Forest Practices Board in appeals. The Forest Practices Board is the "forest watchdog" in BC and has an arms-length relationship from government. In addition to its other mandates and responsibilities, it has been given the ability to appeal specified decisions (or the failure to make a decision) under the *Forest and Range Practices Act* and the *Wildfire Act*. When an appeal is filed by someone other than the Board under these two statutes, the Commission is required to notify the Forest Practices Board of the appeal and invite the Board to participate in the appeal as a third party.

In terms of the mandate of the Commission and the processes that apply once a valid appeal is filed, one must turn to the *Code*. Parts 6 and 9 of the *Code* establish the basic structure, mandate, powers and procedures of the Commission. Part 9 describes the composition of the Commission and how hearing panels may be organized, as well as the requirement to submit this Annual Report. Part 6 describes the authority of the Commission to add parties to an appeal, the requirement to notify and add the Forest Practices Board to certain appeals, the ability to order documents and summon witnesses, and the rights of the parties to present evidence. Additional procedural details, such as the requirements for starting an appeal, are further detailed in Part 3 of the *Administrative Review and Appeal Procedure Regulation*, B.C. Reg. 12/04 (the "*Regulation*").

It is important to note that the appeal powers and procedures in Part 6 of the *Code* and the *Regulation* apply to appeals filed against decisions made under the *Forest and Range Practices Act*, the *Range Act* and the *Wildfire Act*. The *Private Managed Forest Land Act* sets out its own powers and procedures for the Commission; it does not incorporate the *Code* provisions. Similarly, the *Forest Act* includes some of the content requirements in the *Regulation*, but has also established its own powers and procedures for the Commission.

The relevant portions of all of these statutes and regulations are included at the back of this report.

Finally, to ensure that the appeal process is open and understandable to the public, the Commission has created a Procedure Manual which contains more details and information about the Commission's policies and procedures. These policies and procedures have been created in response to issues that arise during the appeal process, from receipt of a notice of appeal, to the hearing, to the issuance of a final decision on the merits. The Procedure Manual is posted on the Commission's website.

The *Forest Practices Code of British Columbia Act*

There are no longer any decisions or determinations made under the *Code* that are appealable to the Commission. However, as stated above, the *Code* is still important because it both establishes the Commission in Part 9 and sets out the basic powers and procedures to be employed by the Commission on most appeals.

Appeals under the *Forest and Range Practices Act*

There are a number of enactments that govern forestry in BC. The *Forest and Range Practices Act* is one such Act. Since taking effect in 2004, this Act has played a major role in the way in which forests are managed in the province.

The *Forest and Range Practices Act* regulates operational planning, forestry practices such as road building, logging and reforestation, requirements for range use planning, range stewardship and grazing schedules, as well as protection, compliance, enforcement and monitoring.

Part 6, Division 4 of the *Forest and Range Practices Act* sets out the decisions that are appealable to the Commission. They include the following:

- approval of a forest stewardship plan, woodlot licence plan or an amendment;
- authorizations regarding range stewardship plans;
- approvals, orders, and determinations regarding range use plans, range stewardship plans or an amendment;
- suspensions and cancellations regarding forest stewardship plans, woodlot licence plans, range use plans or range stewardship plans, and permits;
- orders regarding range developments;
- orders relating to the control of insects, disease, etc.;
- orders regarding unauthorized construction or occupation of a building on Crown land in a Provincial forest;
- orders regarding unauthorized construction of trail or recreation facilities on Crown land;
- determinations regarding administrative penalties;
- remediation orders and stopwork orders;
- orders regarding forest health emergencies;
- orders relating to the general intervention power of the minister;
- orders regarding declarations limiting liability of persons to government;
- relief granted to a person with an obligation under this Act or operational plan;
- conditions imposed in respect of an order, exemption, consent or approval; and
- exemptions, conditions, and alternative requirements regarding roads and rights of way.

Prior to an appeal, an official who makes a determination may correct certain errors in the determination within 15 days after the determination was made.

In addition to this correction process, there is an internal administrative review process. If a person is subject to certain specified determinations listed in the *Forest and Range Practices Act*, and that person requests a review, a review **must** be conducted. However, this review is only available if there is evidence that was not available at the time of the original determination. The Forest Practices Board may also require a review of specified determinations listed under the *Forest and Range Practices Act*, if it receives consent from the person who is the subject of the determination. Either the determination, or a decision made after completion of a review of the determination, may be appealed to the Commission by the Forest Practices Board or by a person subject to the determination.

Appeals under the *Forest Act*

The *Forest Act* governs the allocation of Crown (public) timber and the administration of this resource. The primary focus of the *Forest Act* is:

- determining the rate of logging, known as the allowable annual cut;
- granting different forms of agreements or tenures which allow the harvest of Crown timber;
- establishing the rules for the administration of tenures, and the consequences for non-compliance;
- establishing rules for those allowed to harvest Crown timber, including:
  - the calculation and collection of stumpage to be paid to the government for the timber harvested,
  - scaling timber (the measurement and classification of timber),
  - marking timber and transporting logs; and
  - milling requirements within BC.

In addition, the *Forest Act* provides for road permits and road use permits to access timber, offences and penalties, and appeals of certain decisions.

Appealable decisions under this Act are set out in section 146 and include certain determinations, orders and decisions made by timber sales managers, employees of the Ministry of Forests, Lands and Natural Resource Operations, the Minister of Forests, Lands and Natural Resource Operations, and the Chief Forester. Appealable decisions include matters such as the determination of stumpage and the suspension of rights under a licence or agreement.

Certain decisions of the Chief Forester, or an employee of the Ministry of Forests, Lands and Natural Resource Operations, may be appealed to the Commission without prior review (e.g., stumpage determinations). However, determinations, orders or decisions made by a timber sales manager, and most decisions of the Minister, must be reviewed by a reviewer before they may be appealed. If the person who is subject to the decision, or the person in respect of whose agreement a decision is made, disagrees with the review decision, that person may appeal the review decision to the Commission.

Appeals under the *Range Act*

The *Range Act* provides the authority for the management of Crown range land. It creates different forms of forage tenures, addresses various aspects of tenure management such as transfers, consolidations, subdivisions and amendments, and establishes the regulatory framework for grazing and hay-cutting licences and permits. The Act also includes compliance

and enforcement tools such as the power to conduct inspections, issue orders and suspend or cancel licences and permits.

Decisions that may be appealed to the Commission include the following:

- orders deleting land from the Crown range described in a licence or permit;
- orders reducing the number of animal unit months or quantity of hay set out in the licence or permit;
- orders requiring the holder of a licence or permit to refrain from using all or part of the Crown range;
- orders exempting, or refusing to exempt, a licence or permit holder from an obligation to use animal unit months;
- orders relating to the suspension of all or some of the rights granted under a licence or permit, and orders refusing to reinstate suspended rights;
- orders relating to the cancellation of a licence or permit where rights were under suspension;
- decisions that forage or Crown range will not remain available to a licence holder; and
- amendments to a grazing licence or grazing permit reducing the number of animal unit months due to non-compliance with the licence or permit, or non-compliance with a non-use agreement.

Prior to filing an appeal, the person affected by the order, decision or amendment may request a review, provided that there is evidence that was not available at the time of the original order, decision or amendment.

Either the order, decision or amendment, or the decision made after completion of a review of the order, decision or amendment, may be appealed to the Commission.

An appeal may be filed directly to the Commission against a Minister's order issued under section 15(2) of the *Range Act*, which relates to a proposal for a licence or permit.

Appeals under the *Private Managed Forest Land Act*

Approximately two percent of BC's forest lands are privately owned. Because the legal requirements that apply to logging on Crown land do not apply to logging on private land, the Government decided to establish a property assessment classification of "managed forest", which was designed to encourage private landowners to manage their forest lands for long term forest production through the use of property tax incentives. This program was initially begun in 1988, and was continued in 2004 with the enactment of new legislation, the *Private Managed Forest Land Act*. This legislation established forest management objectives in relation to soil conservation, water quality, fish habitat, critical wildlife habitat and reforestation that were to be applied to private forest management lands. The *Act* also set up the Private Managed Forest Land Council, an independent provincial agency responsible for administering the managed forest program. The Council's responsibilities include:

- setting and monitoring forest practice standards for these managed forest lands;
- handling complaints and investigations; and
- enforcing standards through the use of various orders, determinations, notifications and fines.

Section 33 of the *Private Managed Forest Land Act* allows individuals or companies that are subject to certain decisions of the Council to file an appeal with the Commission. The appealable decisions include:

- determinations that a person has contravened the Act or the regulations;
- remediation orders;
- stop work orders;
- notifications to the assessor regarding contraventions; and
- requests of the Council to rescind or vary orders, decisions or determinations.

Appeals under the *Wildfire Act*

The *Wildfire Act* is dedicated exclusively to wildfire protection in BC. This *Act* specifies the main responsibilities and obligations with respect to fire use, prevention, control and rehabilitation. It also allows the Government to recover its fire control costs, whether on Crown land or private land, and to recover a sum of money to compensate the Crown for its loss of timber, grass land, and other forest land resources and property that is damaged or destroyed by a wildfire. The *Act* also authorizes certain orders, determinations and administrative monetary penalties to be issued for non-compliance with the legislation.

Part 3, Division 3 of the *Wildfire Act* allows an appeal to the Commission from certain orders, or a decision made after the completion of a review of the order.

The Forest Practices Board may also request a review of those same orders, provided that it receives consent from the person who is the subject of the order. Further, it may appeal the order, or the decision made after the completion of the review of the order, to the Commission.

The orders that may be appealed are as follows:

- orders to abate a fire hazard;
- orders determining that a person caused or contributed to a fire or to the spread of a fire;
- orders requiring a person to pay the government's costs for fire control and the costs related to the loss of Crown resources as a result of the fire, as determined by the minister;
- contravention orders;
- administrative penalties and cost recovery orders;
- remediation orders and administrative penalties resulting from a failure to comply with a remediation order; and
- stopwork orders.

Legislative Amendments Affecting the Commission

In this reporting period, there were no legislative changes that affected the types of appeals the Commission hears, or that affected the Commission's powers or procedures.

Evaluation and Recommendations

Under the *Administrative Review and Appeal Procedure Regulation* and section 197 of the *Code*, the Commission is mandated to annually evaluate the review and appeal process and identify any problems that have arisen. The Commission also makes recommendations on amendments to the legislation respecting reviews and appeals.

The Commission is pleased to report that no problems have been identified in either the review or the appeal process during the past year. Accordingly, the Commission is not making any recommendations in relation to either of these processes at this time.

However, the Commission wishes to take this opportunity to comment on the participation of the Forest Practices Board in the appeal process. The Forest Practices Board was established at the same time as the Commission when the *Code* came into force in 1995. Although the Board has participated in numerous appeals since that time, either as an appellant or as a third party, the Commission has rarely taken the opportunity to evaluate its participation in the appeal process.

Over the past seventeen years, the Board has proven to be a valuable participant at Commission hearings. Before the statutory defences of due diligence, officially induced error and mistake of fact were added to the legislation, the Board provided helpful legal argument and analysis on the history and application of the common law defences. Since those defences have been included in the statutes, the Board has continued to provide useful legal submissions on their interpretation and application.

In addition, the Board has often provided a unique environmental and/or public-interest perspective on the issues before the Commission. This ensures that the Commission has as much information as possible before making its decisions which in turn can have a profound impact on the forest industry, the Government's policies and revenue, and public resources. When participating in the appeals, the Board has not unduly lengthened the proceedings: the Board is judicious in its choice of which appeals to become involved in and has performed its "public watchdog" role with professionalism and respect to the other parties.

Statistics

Forest Appeals Commission

Part 4 of the *Administrative Review and Appeal Procedure Regulations* requires the Commission to include in this Annual Report:

- the number of appeals initiated during the reporting period; and
- the number of appeals completed during the reporting period (i.e., final decisions issued).

The following tables provide information on the appeals filed with the Commission, appeals closed by the Commission and decisions published by the Commission, during the reporting period. It should be noted that the Commission publishes all of its decisions on the merits of an appeal, and most of the important preliminary and post-hearing decisions. The Commission also issues unpublished decisions on a variety of preliminary matters that are not included in the statistics below.

In 2011, a total of 18 appeals were filed with the Commission. Six appeals were filed under the *Forest and Range Practices Act*, 11 were filed under the *Forest Act* and one appeal was filed under the *Wildfire Act*. No appeals were filed under either the *Range Act* or the *Private Managed Forest Land Act*.

Regarding the total number of appeals completed, the Commission issued 24 final decisions, including one that was dismissed in a preliminary decision due to a lack of jurisdiction, and six that were consent orders. In addition, 23 appeals were withdrawn or abandoned. Thus, a total of 47 appeal files were closed during 2011.

In addition to the 24 final decisions, the Commission issued one decision on an application for costs in 2011.

Appeals	
Open Appeals at period start	53
Open Appeals at period end	25
Appeals filed	
Appeals filed under the *Forest and Range Practices Act*	6
Appeals filed under the *Forest Act*	11
Appeals filed under the *Private Managed Forest Land Act*	0
Appeals filed under the *Range Act*	0
Appeals filed under the *Wildfire Act*	1
Total appeals filed	18
Appeals closed	
Withdrawn or abandoned	23
Final decisions on the merits	17
Consent orders	6
No jurisdiction/standing	1
Total appeals closed	47
Hearings held on the merits of appeals	
Oral hearings completed	5
Written hearings completed	1
Total hearings held on the merits of appeals*	6
Published decisions issued*	
Final decisions (excluding consent orders)	
Forest and Range Practices Act	4
Forest Act	11
Private Managed Forest Land Act	0
Range Act (dismissed, no jurisdiction)	1
Wildfire Act	2
Consent orders	
Forest and Range Practices Act	0
Forest Act	5
Private Managed Forest Land Act	0
Range Act	0
Wildfire Act	1
Costs decisions	
Forest Act	1
Total published decisions issued	25

***Note: hearings held and decisions issued in 2011 do not necessarily reflect the number of appeals filed in 2011.**

Summaries of Decisions

January 1, 2011 ~ December 31, 2011

Appeals are not heard by the entire Commission; rather appeals are heard by a "panel" of the Commission. The Chair of the Commission will decide whether an appeal should be heard and decided by a panel of one, or by a panel of three members of the Commission. The size and composition of the panel generally depends upon the type(s) of expertise needed by the Commission members in order to understand the issues and adjudicate the appeal in a fair and impartial manner.

Under all of the statutes under which the Commission is empowered to hear appeals, the Commission has the power to confirm, vary or rescind the decision under appeal and to send the matter back to the original decision-maker with or without directions. In addition, under the *Private Managed Forest Land Act* the Commission may make any other order it considers appropriate. When an appellant is successful in convincing the panel that the decision under appeal was made in error, or that there is new information that will change the decision, the appeal is said to be "allowed". If the appellant succeeds in obtaining some changes to the decision, but not all that was asked for, the appeal is said to be "allowed in part". When an appellant fails to establish on a balance of probabilities that the decision is incorrect on the facts or in law, and the Commission upholds the original decision, the appeal is said to be "dismissed".

The Commission also has the power to order a party or intervenor to pay the costs of another party or intervenor. An application for costs may be made at any time in the appeal process, but will not normally be decided until the hearing concludes and the final decision is rendered.

It is important to note that the Commission encourages parties to resolve the issues under appeal either on their own or with the assistance of the Commission. For appeals under the *Forest Act*, a special procedure has been put in place in accordance with a memorandum from the Ministry of Forests, Lands and Natural Resource Operations. Upon receipt of a Notice of Appeal under the *Forest Act*, the Commission will hold the appeal in abeyance for 30 days to allow the parties the opportunity to enter into discussions to resolve the issues under appeal.

Regardless of the statute, many appeals are resolved without the need for a hearing. Sometimes the parties will reach an agreement amongst themselves and the appellant will simply withdraw the appeal. At other times, the parties will set out the changes to the decision under appeal in a consent order and ask the Commission to approve the order. The consent order then becomes an order of the Commission. The Commission has included descriptions of some consent orders in the summaries.

It is also important to note that the Commission issues many decisions each year, some that are published and others that are not. Therefore,

not all of the decisions made by the Commission between January 1, 2011 and December 31, 2011 have been included in this Annual Report. Rather, the Commission has selected a few of its decisions to be summarized in this report that reflect the variety of subjects and issues that come before the Commission in any given year. The subject matter and the issues can vary significantly in both technical and legal complexity. The summaries have been organized according to the statute under which the appeal was filed.

Finally, these summaries are an interpretation of the decisions by Commission staff and may be subject to a different interpretation. For a full viewing of all published decisions issued during this reporting period, and summaries of those decisions, please refer to the Commission's web page.

Appeals under the *Forest and Range Practices Act*

Duty to consult with a First Nation before taking enforcement action for alleged illegal harvest of Crown timber

2008-FOR-010(a) Jack Sebastian and the Suskwa Chiefs Economic Development Corporation v. Government of British Columbia

Decision Date: September 2, 2011

Panel: Alan Andison

Jack Sebastian is the Chief Executive Officer of the Suskwa Chiefs Economic Development Corporation (the "Corporation"), a company formed by six Gitxsan Houses to further their economic interests. As part of its economic development strategy, the Corporation wanted to perform salvage logging of dead and damaged timber alongside the Suskwa forest service roads located within the territory claimed by the Gitxsan. Sometime in or around 2006, the Corporation applied to the Ministry for two forestry licences to cut. Mr. Sebastian applied for the same kind of licence, with the intent that the Corporation would perform the work. The Ministry issued the three licences. Each licence identified the harvesting boundaries. The Corporation's employees or contractors harvested under the licences from June to August 2006.

In mid-August 2006, the Ministry notified Mr. Sebastian that the Corporation may have harvested Crown timber beyond the licence boundaries. In response, Mr. Sebastian advised the Ministry that all of the harvesting was an exercise of aboriginal rights by the owners and stewards of the Gitxsan House's traditional territory. At no time did Ministry staff engage in any consultation with Gitxsan representatives about their asserted aboriginal rights or title, or how the Ministry's enforcement actions might impair those rights.

In November 2008, the District Manager determined that the Appellants contravened section 52(1) of the *Forest and Range Practices Act* (the "*FRPA*") three times by harvesting timber from Crown land without authorization. Specifically, the Appellants harvested a total of 1,238 cubic metres of timber from areas that were beyond the boundaries identified in their licences. The District Manager assessed a penalty of $500 against Mr. Sebastian, and penalties of $500 and $1500 against the Corporation.

Mr. Sebastian and the Corporation appealed the determination and penalty on the basis that the Ministry had a duty to consult with the Gitxsan about its aboriginal rights during the investigation and enforcement proceedings, and the Ministry's failure to do so violated section 35(1) of the *Constitution Act, 1982*. In contrast, the Government argued that the District Manager had no duty to consult in this case. It submitted that one Appellant is a corporation and the other is the corporation's director/officer, both of which were engaged in a commercial forestry operation outside the scope of any aboriginal rights.

In addition, the Government argued that the District Manager had no jurisdiction to consider claims of aboriginal rights in an enforcement proceeding. In the alternative, if there was a duty to consult, that duty was met because representatives of the Gitxsan obtained the licences and agreed to the licence terms.

The Commission's decision

The Commission found that the asserted aboriginal rights were held by the Gitxsan as a group, and that the harvesting was carried out by Mr. Sebastian and the Corporation as the Gitxsan's representatives. Further, the Commission found that the decision in *R. v. NTC Smokehouse* [2006], 2 SCR 672, applies in this case, and it indicates that corporate entities may rely on a First Nation's claim of aboriginal rights as a defence to a regulatory proceeding. The Commission held that the Appellants could rely on any aboriginal rights claimed by the Gitxsan as a defence to the enforcement action, because the Appellants were acting on behalf of, and with the full authority of, the Gitxsan when they applied for the licenses and undertook the harvesting.

Next, the Commission considered the test set out in *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 ("*Haida*"), and whether a duty to consult with the Gitxsan was triggered by the Ministry's investigation and enforcement proceedings. The Commission held that a duty to consult with the Gitxsan was triggered because: (1) the Crown, as represented by the Ministry, knew of the existence of the Gitxsan's claims of aboriginal rights, including title, in relation to the lands where the harvesting occurred; and (2) the Crown contemplated conduct that might adversely affect the Gitxsan's aboriginal rights. Specifically, the Commission found that the Crown knew that the Gitxsan claimed aboriginal title to the land where the contraventions occurred, including a right to govern the forest resources on those lands. The Commission noted that, according to *Haida*, the Crown is entitled to manage resources pending the resolution of aboriginal rights claims, but the Crown may not do so in a manner that deprives the aboriginal claimants of the benefits of the resources.

The Commission held that the Ministry's investigation and enforcement proceedings had the effect of penalizing the Appellants, and consequentially the Gitxsan, for harvesting timber that they claim to own and claim to have a right to manage. The Ministry's action sent a clear message to all Gitxsan that they will face penalties for harvesting timber in areas where they assert title unless they seek, and receive, Crown authorization for harvesting. In the Commission's view, the fact that the Appellants held licences for some of the areas that they harvested was irrelevant. It concluded that the effect of the enforcement action on the asserted aboriginal rights was the same as if they had proceeded to harvest without ever holding any licences in the area; namely, the penalties were for unauthorized timber harvesting, not for violating the terms of the licences *per se*. In addition, the Commission found that the enforcement action proceeded without any consideration of the effects of the penalties on the Gitxsan's claim of title to the area, and the District Manager proceeded without any consultation with the Gitxsan.

The Commission then considered whether the Appellants' claim that consultation was required amounted to a collateral attack on the Province's validly enacted regulatory scheme. The Commission found that the Appellants' claim was not a collateral attack on the Province's forestry legislation. Rather, the Appellants were asserting a valid defence, arising from constitutionally recognized rights, to a finding of contraventions and the issuance of penalties under the *FRPA*.

Finally, the Commission considered what remedy was appropriate in the circumstances. The Commission held that its powers on an appeal are

limited to what is provided in its enabling legislation, and the Commission has no jurisdiction to declare the District Manager's determination to be a nullity as requested by the Appellants. Given that no consultation occurred before the determination was made, the Commission found that the determination and the associated penalties should be rescinded.

▶ Accordingly, the appeal was allowed.

Penalty confirmed for failing to achieve forest regeneration requirements

2011-FOR-001(a) and 2011-FOR-002(a) Charles E. Kucera v. District Manager, Ministry of Natural Resource Operations

Decision Date: October 6, 2011

Panel: David Searle, CM, QC

Charles Kucera harvested timber under a woodlot licence in 2001. After harvesting, the licence required the "openings" to be reforested by December 10, 2008 in accordance with the stocking standards set out in the silviculture plan.

In 2009, the Ministry conducted a stocking survey of the woodlot and found that 9.3 hectares of a 19 hectare opening in block 2 was not reforested as required. Two years later, the District Manager, Columbia Forest District, issued a determination to Mr. Kucera. He found that Mr. Kucera contravened section 77(1) of the *Woodlot Licence Forest Management Regulation* by failing to achieve the required stocking standards and levied and penalty of $1,000. The District Manager also issued a remediation order requiring Mr. Kucera to complete the regeneration to the minimum stocking standards by July 2011, or alternatively, to have the original stocking standards reviewed by a professional forester and submit an amended plan.

Mr. Kucera appealed the determination and remediation order. Although he did not dispute that the minimum number of stems per hectare of the preferred species had not been achieved by 2009, he said that he had been duly diligent and, therefore, the Commission should find that he has a defence to the contravention.

At the appeal hearing, Mr. Kucera agreed with the Government that the appeal of the remediation order need not proceed, because the remediation order had expired and a new stocking survey had found that the minimum number of preferred stems per hectare had been achieved.

On the appeal from the determination and penalty, the Commission found that Mr. Kucera had not established a defence of due diligence. Despite many years and many opportunities to address the stocking requirement on the woodlot, he had not done so. Mr. Kucera had ordered seedlings, but then cancelled the order because he could not afford to pay for the seedlings and their planting. Although Mr. Kucera said that he could not work due to an injury in 2001, he provided no medical evidence to establish the seriousness of the injury. The Commission concluded that the determination and the penalty should be confirmed.

▶ Accordingly, the appeals were dismissed.

Appeals under the *Forest Act*

All of the appeals decided under this Act in 2011 related to stumpage rates. A stumpage rate is the amount of money that a person (the licensee) must pay to the Government for harvesting Crown timber. The Ministry of Forests, Lands and Natural Resource Operations determines the rate that a licensee must pay, and advises the licensee of the rate in a stumpage advisory notice or a stumpage adjustment notice.

Section 105 of the *Forest Act* states that these rates must be determined, redetermined or varied in accordance with the policies and procedures

approved by the Minister of Forests, Lands and Natural Resource Operations. Those policies and procedures are contained in two manuals, one for the interior forest region, and one for the coastal forest region. For the interior, stumpage rates must be calculated in accordance with the Interior Appraisal Manual ("IAM"). For the coast, stumpage rates must be calculated in accordance with the Coast Appraisal Manual ("CAM"). The content of these manuals have the force of law under section 105 of the *Forest Act* and the Commission is required to apply them under section 149(3) of that Act. An example of how these manuals differ in the language used, and how the wording can lead to different results, is found in the first two case summaries which deal with changed circumstance reappraisals.

Almost all of the appeals from stumpage determinations require the analysis and interpretation of one section or another within the manuals. As will be seen from the following summaries, this analysis and interpretation is often extremely technical and deals with a very specialized subject matter. This is particularly evident from the Western Forest Products Ltd. case which dealt with truck haul distances and the selection of appraisal log dumps.

When does a change in harvesting method trigger a "changed circumstance" reappraisal under the CAM?

2009-FA-007(a) International Forest Products v. Government of British Columbia

Decision Date: June 16, 2011

Panel: Gabriella Lang, R. O'Brian Blackall, Bruce Devitt

International Forest Products Ltd. ("Interfor") appealed a stumpage rate determination issued by the Regional Business Analyst for the Coast Forest Region. At issue was whether a stumpage rate reappraisal had been triggered by a changed circumstance with respect to Interfor's harvesting methods in the area of cutting permit ("CP") 136 on northern Vancouver Island.

The process for determining stumpage rates begins with the licensee preparing an appraisal data submission and sending it to the Ministry. In April 2007, Interfor sent its appraisal data submission for CP 136 to the Ministry. The appraisal data submission estimated that 34 percent of the timber volume would be harvested by cable yarding, and the remainder would be harvested by ground-based methods. Cable yarding is generally more expensive than ground-based harvesting methods, and it generally causes less disturbance of moist soils. The Ministry accepted the appraisal data submission and used it to determine a stumpage rate for CP 136. In May 2007, the Ministry notified Interfor that a stumpage rate of $17.59 per cubic metre applied to sawlogs harvested under CP 136, effective on April 30, 2007.

In June and July 2007, Ministry staff inspected the CP 136 area, and observed that there had been less harvesting by cable yarding than indicated in the original appraisal data submission. The Ministry determined that there had been a "changed circumstance" within the meaning of section 3.3.1(1)(a) of the CAM.

The Ministry requested that Interfor provide a reappraisal data submission reflecting the change in the volume harvested by cable yarding. Interfor disputed that a changed circumstance had occurred and simply re-sent its original appraisal data submission to the Ministry.

In May 2009, the Ministry issued a reappraisal with a stumpage rate of $19.96 per cubic metre for sawlogs harvested under CP 136, effective May 1, 2007. The Ministry based the reappraisal on its own estimate that only four percent of the volume had been harvested by cable yarding.

Interfor appealed the reappraisal to the Commission. It asked the Commission to restore the

original stumpage rate on the basis that: (1) there had been no "changed circumstance"; and, (2) even if there was a changed circumstance, the CAM specified that the effective date of the reappraisal was May 1, 2007, and the original appraisal data submission should be used in a reappraisal because there was no change in the site conditions of CP 136 between April 30, 2007 (the effective date of the original stumpage determination) and May 1, 2007 (the effective date of the reappraisal).

The Government submitted that a changed circumstance had occurred, because Interfor harvested at least 15 percent more volume by ground-based methods than was indicated in the original appraisal data submission. The Government argued that the change in the actual volume harvested by cable yarding, compared to the volume indicated in the original appraisal data submission, was evidence of a changed circumstance.

The Commission's decision

The Commission considered the ordinary meaning of the words, as used in the CAM. It found that the words "plans" and "is planned" indicate an intention to do something, and are prospective or forward looking. The Commission then considered whether there was evidence of Interfor's original plan or intentions for harvesting the CP 136 area, and whether there was evidence that Interfor's plan or intentions with respect to harvesting methods changed after it submitted the original data appraisal submission.

The Commission found that Interfor's original appraisal data submission was evidence of its original plan or intention for harvesting CP 136. When the original data submission was prepared, Interfor's staff used professional judgment to estimate the percentage of harvesting by cable yarding, based on their knowledge of the site and the weather conditions typical for the time of year when harvesting would occur. Contrary to the Government's position, the Commission found no evidence that, after submitting the original data submission, Interfor planned or intended to use a method to harvest at least 15 percent of the volume that was different from the method that Interfor originally planned. Although there was a change in the actual percentages harvested by the two methods, there was no evidence that Interfor, or its contractor, had planned that change. Rather, the decision to change the harvesting method occurred due to site conditions at the time of harvest. Because the site conditions were unusually dry for that time of year, the contractor was able to do more ground-based harvesting than originally planned.

The Commission concluded that, if the Minister had intended evidence of the *actual* volumes harvested by different methods to trigger a changed circumstance reappraisal, the Minister should have clearly said so in the CAM. In addition, the Commission found that there would have been no changes in the conditions of the CP 136 area between April 30 and May 1, 2007, and therefore, the original appraisal data submission should be used if a reappraisal was required.

- The appeal was allowed.

When does a change in road development costs trigger a "changed circumstance" reappraisal under the IAM?

2011-FA-001(a) Lowell A Johnson Consultants Ltd. v. Timber Pricing Officer, Ministry of Forests and Range

Decision Date: November 15, 2011

Panel: James Hackett

This appeal also involved a changed circumstance reappraisal, but under the IAM as opposed to the CAM.

In this case, Lowell A. Johnson Consultants Ltd. appealed the stumpage rate contained in a

reappraisal issued in December 2010 by the Timber Pricing Officer, Nadina Forest District. The reappraisal occurred after the Ministry inspected the Appellant's cutting permit area and discovered that additional stabilizing material had not been placed on all of the temporary roads as claimed in the Appellant's original appraisal data submissions. The Ministry considered this to be a "changed circumstance" within the meaning of section 2.2.1(1)(b) of the IAM, which required a reappraisal.

In the reappraisal, the Ministry deleted the cost estimate for the additional stabilizing material for all temporary roads in the cutting permit area. This resulted in a reduction of more than 15 percent in the total estimated development costs and an increase in the stumpage rate from $7.54 per cubic metre to $9.42 per cubic metre for sawlogs scaled between September 5 and September 30, 2009.

The Appellant appealed the reappraisal on three grounds. The first was that there was no "changed circumstance" as defined in the IAM. Although additional stabilizing material was not actually added to the roads contrary to the original appraisal data submissions, it maintained that there had been no change in the licensee's plans in that regard between the effective date of the original determination (September 4, 2009) and the effective date of the reappraisal (September 5, 2009). The Appellant also argued that the cost estimate for additional stabilizing material was improperly removed for all of the roads. Finally, it said that the roads should have been designated as "short term" instead of "temporary", as defined in the IAM. The Appellant also requested an order for costs against the Government.

In response, the Government stated that the reappraisal should be confirmed because a "changed circumstance" had occurred and the roads were properly classified as "temporary". The Government also argued that the application for costs should be denied.

The Commission found that the language in section 2.2.1(1)(b) of the IAM indicates that a "changed circumstance" occurs when there is a difference of 15 percent or more between the total development cost estimate in the appraisal data submission for the most recent appraisal or reappraisal, and the total development cost estimate that corresponds to the actual activities undertaken in the cutting permit area. It found that the per kilometre allowances for road costs in the IAM are average costs derived from data for roads in the Forest District, and that Ministry staff multiply those costs to the applicable road lengths to estimate the road cost for appraisal purposes. In this case, the difference was greater than 15 percent, and therefore, a changed circumstance reappraisal was required.

The Commission also distinguished this appeal from the appeal decided in *Interfor* (above), on the basis that the two appeals involved differently worded sections of different appraisal manuals.

Regarding the third ground for appeal, the Commission considered the definitions of "temporary" and "short term" roads in the IAM. A "temporary" road is defined as a road that is planned to be used for harvesting and/or hauling for less than one year. Based on the evidence, the Commission concluded that the roads at issue were properly classified as "temporary", and the reappraised stumpage rate was confirmed.

Finally, the Commission found that there were no special circumstances that warranted an order for costs.

- Accordingly, the appeal was dismissed, and the Appellant's application for costs was denied.

Five stumpage appeals resolved without the need for a hearing

2007-FA-035(a), 044(a), 051(a), 2008-FA-009(a), 011(a) Canadian Forest Products Ltd. v. Government of British Columbia

Decision Date: May 10, 2011

Panel: Alan Andison

Canadian Forest Products Ltd. ("Canfor") appealed five separate stumpage rate determinations issued between April 2007 and February 2008 by the Timber Pricing Coordinator. These determinations contained reappraisals of previous stumpage rate determinations issued between 2002 and 2005. As the issues in these appeals were similar to issues being decided by the Commission in another case, and later by the courts, Canfor's appeals were held in abeyance pending a final outcome of those cases.

Ultimately, the parties negotiated an agreement that resolved the outstanding appeals. With the consent of the parties, the Commission ordered the reappraisal determinations to be set aside, and the original stumpage rate determinations to be restored.

▶ The appeals were allowed, by consent.

When is a log dump an "appraisal log dump" within the meaning of the CAM?

2005-FA-002(a), 003(a), 009(a), 010(a), 048(a), 078(a), 131(a); 2006-FA-020(a) and 031(a) Western Forest Products Ltd. v. Government of British Columbia

Decision Date: May 19, 2011

Panel: Alan Andison

Western Forest Products Ltd. ("Western") appealed nine separate stumpage rate determinations issued between September 2004 and May 2006 by the Regional Appraisal Coordinator, Coast Forest Region. The determinations applied to sawlogs harvested under nine cutting permits ("CPs") located within Western's tree farm licence ("TFL") 25, near Port Renfrew on the west coast of Vancouver Island. The appeals concerned the selection of the appraisal log dump in calculating the stumpage rates applicable to timber harvested under the CPs.

The stumpage determinations were issued under a 2004 version of the CAM that, for the first time, incorporated the market pricing system ("MPS") into all stumpage appraisals on the Coast. The MPS is an equation-based model that uses data from past winning bids for Crown timber that was sold through a competitive bidding process. Data from competitive timber sales are applied in calculating stumpage rates from timber held under long-term tenures, such as TFL 25, which are not sold through a competitive bidding process. The truck haul distance is a variable in the MPS equation in the CAM for calculating stumpage rates. The truck haul distance is the volume weighted average one-way haul distance from the geographic centre of each part of the CP area to the appraisal log dump. Thus, calculating the truck haul distance requires the selection of an appraisal log dump. The farther the appraisal log dump is by road from the CP area, the longer the truck haul distance. Truck haul distance is a negative factor in the equation used to determine stumpage rates, and therefore, a longer truck haul distance will produce a lower stumpage rate, assuming the other variables remain constant. The phrase "appraisal log dump" is defined in the CAM, but the parties disputed how that definition should be interpreted and applied.

Western appealed on the grounds that the Regional Appraisal Coordinator erred by using the Jordan River log dump rather than the Shoal Island log dump (located near Chemainus) as the appraisal log dump in determining the stumpage rates for the nine CPs. The Jordan River log dump is located near Port Renfrew, is owned by Western, and was used almost exclusively by Western during the relevant time period. There was no dispute that the Jordan River

log dump is closer by road to the nine CPs than the Shoal Island log dump, and that most of the timber harvested from the nine CPs was hauled to the Jordan River log dump. However, Western submitted that the Jordan River log dump was not a reasonable choice of appraisal log dump for the CPs because it was not available to any operator other than Western. Western argued that in choosing an "appraisal log dump", as defined in the CAM, the MPS principles that inform the CAM require selection of the closest log dump by road to the centre of the CP area that is operational and generally available to all licensees, which in this case is the Shoal Island log dump.

The Government submitted that the definition of "appraisal log dump" in the CAM is clear, and it provides the Regional Appraisal Coordinator with no discretion when selecting an appraisal log dump. The Coordinator must simply pick the closest log dump by road to the centre of the CP area, which in this case is the Jordan River log dump.

The Commission's decision

The Commission considered two issues:

- whether the Coordinator exercises discretion when selecting the appraisal log dump; and, if so,
- whether the Coordinator exercised his discretion in an unreasonable manner when he selected Jordan River as the appraisal log dump for the nine CPs.

Applying the principles of statutory interpretation to the definition of "appraisal log dump" in the context of the CAM, the Commission held that the Coordinator exercises discretion when he or she selects the appraisal log dump for a CP. The Commission found that there is no list of appraisal log dumps in the applicable versions of the CAM, and the definition of "appraisal log dump" does not dictate which sites may be considered as options for appraisal log dumps. The Coordinator considers information that is not provided in the CAM regarding potential log dump sites, and the Coordinator selects from potential log dump sites based on his or her professional knowledge about timber harvesting and transport processes.

Regarding the second issue, the Commission considered the language in the relevant provisions of the CAM, as well as the applicable case law and legislation. First, the Commission found that section 4(e) of the *Ministry of Forests and Range Act* requires the Government to assert its financial interests in its forest resources in an equitable manner, and to apply the policies and procedures in the CAM in the same way to all licensees. However, the equitable application of the CAM may result in different stumpage rates for licensees harvesting different stands of timber from the same general area.

Next, the Commission considered how an appraisal log dump is to be chosen. It found that the CAM contains two primary constraints on the selection of an appraisal log dump: (1) the definition of "appraisal log dump", which indicates that the appraisal site must be a "log dump" and must be the closest one to the CP area; and (2) stumpage rates must be determined in a manner that produces the highest stumpage rate for the CP area.

The Commission interpreted the definition of "appraisal log dump" to mean the closest site to the CP area that was a functional log dump at the time of appraisal, and was available for use by both a hypothetical market bidder and the affected licence holder. The evidence established that the Jordan River log dump was functional at the time of appraisal, and that the actual winning bids for timber near Port Renfrew which were used to develop the MPS equation in the CAM, were appraised to the Jordan River log dump, despite that fact that those bidders did not actually use that log dump or haul their logs to it. Regarding Western's nine CPs, the evidence indicated that the Jordan River log dump was functioning and

available to Western and its affiliated companies at the time of appraisal. The Commission held that, if the timber in TFL 25 was, hypothetically, sold through a competitive bidding process, at least one hypothetical winning bidder would have been in Western's position in terms of having access to the Jordan River log dump. There was no reason why a hypothetical bidder, participating in a hypothetical timber auction, could not have made a winning bid that took into account the truck haul distance to the Jordan River log dump.

In this case, the Jordan River log dump was the appropriate choice because it was the closest log dump to the nine CPs that was functional and available to a hypothetical winning bidder at the time of appraisal, and it results in a higher stumpage rate than if Shoal Island was selected as the appraisal log dump. Consequently, the Commission concluded that the Coordinator exercised his discretion in a reasonable manner when he selected Jordan River as the appraisal log dump for the nine CPs.

- The Commission upheld the determinations and dismissed the appeals.

Appeals under the *Private Managed Forest Land Act*

There were no decisions issued on appeals from determinations made under the *Private Managed Forest Land Act* during the reporting period.

Appeals under the *Range Act*

Grazing permit cancelled for lack of water

2010-RA-001(a) Jason Horst v. Government of British Columbia

Decision Date: March 16, 2011

Panel: Alan Andison

Jason Horst raises cattle near Grasmere, BC. He held a grazing permit that allowed him to graze his cattle on Crown range in the Grasmere Range Unit (the "Range Unit") from June 1 to August 31, for a 4-year term commencing on June 1, 2006. Cattle on this Range Unit obtained their water from a watering system operated by the Ministry of Forest and Range.

In 2009, the Ministry found that someone had tampered with the water system. As no other secure water source was available, the Ministry decided to discontinue grazing on the Range Unit. A District Manager issued a temporary "directed non-use order" to the tenure holders on the Range Unit, including Mr. Horst.

Mr. Horst requested an administrative review of that order. To solve the water problem, he said that he would provide water from his private land. The District Manager accepted this offer and revised his original order to allow a limited amount of grazing on the Range Unit during July 1 to August 31, 2010 only. However, he said that the order for non-use would remain in effect for 2011, unless the Ministry's water system was restored.

Mr. Horst was not satisfied with this revised order and appealed it to the Commission. He asked the Commission to allow him to graze some of his cattle on the Range Unit from August 1 to October 2, 2011, and, as he had done earlier, he offered to supply the cattle with water from his private land.

In January 2011, before the appeal was heard, the Ministry applied to the Commission to dismiss the appeal without a hearing. It noted that Mr. Horst's grazing permit had, in fact, expired at the end of 2010. It also said that no replacement permit would be issued because a decision had been made not to replace the water delivery infrastructure in the Range Unit. Without a permit to use the land for grazing, the Ministry argued that the entire appeal was "moot". Specifically, Mr. Horst had no legal authority to use the range land after 2010, and therefore, the Commission could not consider or address his request for grazing in 2011.

Mr. Horst opposed the application and asked the Commission to hear his appeal.

The Commission agreed with the Ministry and concluded that the issues raised by the appeal were "moot". Mr. Horst's grazing permit had expired and he had no grazing rights on the Range Unit in 2011. Although the order for non-use covered 2011, the Commission determined that this was an error and that the order should not have extended beyond the life of the permit. The Commission concluded that it had no jurisdiction over the remedy sought by Mr. Horst in relation to the 2011 season, without there being a replacement grazing permit for that period.

- The Commission granted the application to dismiss the appeal. The appeal was dismissed for lack of jurisdiction.

Appeals under the *Wildfire Act*

When has the controlled burn of a debris pile "escaped" or become "out of control"?

2009-WFA-004(b) Louisiana-Pacific Canada Ltd. v. Government of British Columbia

Decision Date: May 16, 2011

Panel: James Hackett, Blair Lockhart, Reid White (dissenting, in part)

Louisiana-Pacific Canada Ltd. ("LP") appealed a contravention order and administrative penalty/cost recovery order issued by a Fire Centre Manager with the Southeast Fire Centre, Ministry of Forests and Range. The Manager determined that LP contravened the *Wildfire Regulation* by failing to ensure that its open fires did not escape, and by failing to take the required actions when the fires spread beyond the burn area or otherwise became out of control. The Manager levied penalties totalling $4,230 for the contraventions.

The alleged contraventions occurred when LP staff ignited some logging debris piles in a cutblock in late October 2007. When the piles were ignited, LP staff considered the snow present on the cutblock to be a fuel break that would prevent the fires from spreading. One day after the fires were ignited, LP staff checked the cutblock and found that the fires had spread beyond the piles and into the fuel break. However, LP staff decided that an adequate fuel break of snow was still in place and the fires would not spread any further. A few days later, Ministry staff visited the cutblock and found that the fires had burned beyond the piles and had burned approximately 3 hectares of seedlings in the cutblock. Ministry staff observed some smoke coming from the piles and a few small "smokes" from other areas in the

cutblock where the fires had spread. All of the fires self-extinguished before November 2007.

LP argued that the fires did not "escape" because they did not go beyond the cutblock boundaries or escape the burn area, and that they were not "out of control" within the meaning of the *Regulation*. LP also argued that the determination process was unfair because the Ministry did not notify LP of the investigation until well after the relevant events had occurred. Further, LP submitted that, if the contraventions occurred, the defence of due diligence applied.

The Commission's decision (majority)

The Commission considered the following issues: (1) whether the Ministry's failure to notify LP of its investigation tainted or nullified the determination process such that the orders should be rescinded; (2) whether LP contravened the *Regulation*; (3) if LP contravened the *Regulation*, whether any defences apply; and (4) if no defences apply, whether the penalties are appropriate in the circumstances.

The Commission unanimously found that the Ministry's failure to formally notify LP of the investigation until February 2008 did not taint or nullify the determination process such that the orders should be rescinded. The Commission held that, although it would have been helpful to LP if the Ministry had notified it of the investigation as soon as the Ministry suspected a possible contravention, the most important and relevant evidence was in relation to the events that occurred in the first two days after the fires were lit. When the Ministry initially contacted LP about the fires, the fires were 4 days old, the spreading had already occurred, and the risk of further spreading was low. Given the evidentiary basis for the contraventions, the timing of the Ministry's notification was not fatal to the enforcement proceedings and the orders.

With regard to the remaining issues, the Commission was divided on its findings. On the issue of whether LP contravened sections 22(3) or 22(4) of the *Regulation*, the majority of the Commission found that the fires did not "escape" within the meaning of section 22(3). Although the fires did spread beyond the burn area into the cutblock, they did not spread into the surrounding timber or grass land, and there was no damage to the environment, public property, private property or other values protected by the legislation. The majority also held that the fires were not "out of control" within the meaning of section 22(4). In the context of the *Regulation*, the majority found that "out of control" means beyond the capacity of the people or equipment required to be present, or the site conditions, to prevent further spread of the fire into forest land or other values that are protected by the legislation. The requirements in section 22(4) to take fire control action and report a fire are triggered when a fire is beyond the burn area *and* is out of control. In this case, the majority found that those requirements were not triggered because the fire was not "out of control". Since the fire did not escape and was not out of control, there were no contraventions of sections 22(3) or 22(4) of the *Regulation*.

Accordingly, the majority of the Commission concluded that the contraventions and penalties should be rescinded and they did not need to consider the remaining issues.

The Dissent

One member of the Panel disagreed with the majority's interpretation and findings with respect to the meaning of "escape" and "out of control". This member found that an escape occurs when a fire is no longer contained in the burn area that is bounded by a fuel break. In this case, the fires spread beyond the fuel break and, although the consequences were mainly detrimental to LP's interests – in that it had to replant the burned seedlings – there was a

contravention of section 22(3) and enforcement action was appropriate. This member also held that section 22(4) was contravened because spreading beyond the burn area constitutes being "out of control", and LP did not take action to contain, extinguish or limit the spread of the fire, or report it as required by the *Regulation* (i.e., as soon as practicable). The minority also held that LP failed to establish the defence of due diligence, and that the penalties were appropriate in the circumstances.

- In accordance with the majority decision, the appeal was allowed.

Sparks from passing train cause forest fire but at what cost

2008-WFA-001(a) and 2008-WFA-002(a)
Canadian National Railway Company v.
Government of British Columbia

Decision Date: June 27, 2011

Panel: Alan Andison, Les Gyug, James Hackett

Canadian National Railway ("CNR") appealed two determinations issued by a Fire Centre Manager with the Kamloops Fire Centre. In the first determination, the Manager found that CNR had contravened section 3(1) of the *Wildfire Act* and sections 9(a), (b) and (c) of the *Wildfire Regulation* in relation to railway operations that caused a wildfire ("Fire 135"). The Manager levied penalties of $1,000 for the contravention of the *Wildfire Act*, and $10,000 for the contraventions of the *Regulation*. The Manager also ordered CNR to pay $254,680.38 in damages for Crown timber that was burned in Fire 135, which was 75 percent of the total stumpage value of the timber, as calculated by the Manager.

In the second determination, the Manager found that CNR had contravened section 9(a) of the *Regulation* in relation to railway operations that caused another wildfire ("Fire 136"). As the parties agreed that no contravention had occurred in relation to Fire 136, this appeal was resolved by consent and was not the subject of the appeal hearing. The only issues decided by the Commission related to Fire 135.

Fire 135 occurred near Ashcroft, BC, and was reported on the evening of July 29, 2005. The fire was caused by hot metal fragments falling from the dragging brake of a CNR railway car. The hot fragments ignited vegetation on the railway right-of-way. Shortly after the fire was reported, the Ministry dispatched initial attack crews and aircraft to extinguish the fire. The following day, the fire escaped from the right-of-way and expanded to cover an area of approximately 40 square kilometres. The fire damaged or destroyed 25,010.8 cubic metres of mature Crown timber. Approximately one year after the fire, a licensee harvested the area and paid $4,874.80 in stumpage for harvesting 19,809.79 cubic metres of salvaged timber.

Prior to the hearing, the parties agreed that CNR had only contravened section 9(a) of the *Regulation*, and CNR agreed to pay the $10,000 penalty. The remaining issue to be decided by the Commission was the value of the Crown timber that was burned in Fire 135. The parties agreed on the volume of timber that had been damaged or destroyed by Fire 135, but they disagreed on the applicable valuation date for calculating the value of the timber. CNR argued that the timber value should be calculated based on the stumpage rate that applied on the date that the salvaged timber was scaled, and that the Manager had jurisdiction to reduce the amount to 75 percent of the timber value. CNR also submitted that it should not have to pay any amount for the timber, because stumpage was paid when the timber was salvaged.

The Government argued that the timber value should be calculated based on the stumpage rate that would have applied on the date that the fire ignited, that the Manager had no jurisdiction to reduce the amount to 75 percent of the timber value, and

that the claim against CNR for timber value under the *Wildfire Act* is unrelated to the stumpage revenue that was collected when the timber was salvaged.

The Commission's decision

The Commission found that, when a cost recovery order is made, the value of the Crown timber that was damaged or destroyed as a result of the contravention must be calculated by ascertaining the amount of stumpage applicable to that timber under the *Forest Act*. Specifically, the rate that would likely have applied to the timber if rights to the timber had been granted under an agreement entered into under the *Forest Act*. However, when Fire 135 occurred, there was no such agreement in place. If the fire had not occurred, CNR may have applied for an agreement (a cutting authority) to harvest the timber sometime in the future. If so, an employee of the Ministry would have determined a stumpage rate based on the provisions of the IAM that applied at the time when the licensee applied for a cutting authority. Consequently, the Commission found that the appropriate rate is one "*that would likely have applied sometime in the future*." Based on the evidence of the parties, this rate would be the one that applied when the timber was scaled or cruised; namely, $0.25 per cubic metre.

In addition, the Commission found that the Manager had no statutory authority to reduce the value of the damaged or destroyed timber to 75 percent of its stumpage value. The *Wildfire Act* requires the timber value to be calculated in the prescribed manner which is set out in the *Regulation*. None of the legislation authorizes the Manager to reduce the value of the damaged or destroyed timber in this case.

Finally, the Commission found that nothing in the relevant legislation indicated that the stumpage revenue paid when the licensee salvaged the damaged timber should be applied as a credit when assessing damages against CNR for causing the fire that damaged the timber.

- The appeal in relation to Fire 136 was allowed by consent (Appeal No. 2008-WFA-002).
- The appeal in relation to Fire 135 (Appeal No. 2008-WFA-001) was allowed, in part.

Appeals of Commission Decisions to the Courts

January 1, 2011 ~ December 31, 2011

British Columbia Supreme Court

During this reporting period, no judgments were released by the Court on appeals of Commission decisions.

British Columbia Court of Appeal

Crown timber harvested without authorization and without any reasonable defence

Ronald Edward Hegel and 449970 B.C. Ltd. v. British Columbia (Ministry of Forests and the Forest Appeals Commission)(Forest Practices Board, Intervenor)

Decision date: November 8, 2011
Court: BCCA; Justices Donald, Bennett and D. Smith
Cite: 2011 BCCA 446

The case history leading to this Court of Appeal decision is relatively long and complicated. It begins in 2005 with a determination issued by a District Manager, Ministry of Forests and Range, that the Appellants had contravened sections 96(1) and 97(2) of the *Code* by failing to ascertain the boundaries of their private property, and harvesting Crown timber without authority. The District Manager levied administrative penalties totaling $132,897.40 against the Appellants. The Appellants appealed this determination and penalty to the Commission. They argued that they had exercised due diligence in attempting to locate the property boundaries, that they were under a mistake of fact regarding the boundaries, that their actions resulted from an officially induced error, and that the penalty was excessive.

The Commission heard the appeal in 2007. After considering a great deal of evidence regarding the boundaries of the Appellants' property, including modern and historical surveying reports, the Commission concluded that the Appellants had failed to correctly locate the northern boundary of the property, and that none of the defences had been made out by the Appellants. The Commission confirmed the District Manager's determination, except for making a small adjustment to the penalty amount (see *Ronald Edward Hegel and 449970 B.C. Ltd. v. Government of British Columbia* (Decision No. 2005-FOR-009(a), October 12, 2007).

The Appellants then appealed the Commission's decision to the BC Supreme Court. In a judgment released in 2009, the Supreme Court concluded that: (1) the Commission made no error of law in reaching its conclusion about the location of the northern boundary of the Appellants'

property or in concluding that the alleged area of unlawful harvesting was Crown land; (2) although the Commission had misstated Mr. Hegel's evidence as to the starting point of his investigation of the property boundary, the Commission's decision would not and should not have been any different; and (3) the Commission did not misapprehend the evidence concerning the Appellants' due diligence in trying to determine the location of the boundary or in its approach to the defence of mistake of fact. The Supreme Court dismissed the appeal (see *Ronald Edward Hegel and 449970 B.C. Ltd. v. Province of British Columbia (Ministry of Forests and Range)*, 2009 BCSC 863).

The Appellants next sought leave to appeal to the BC Court of Appeal. A Chambers Judge for the Court of Appeal found that the appeal raised questions of mixed fact and law, rather than law alone. Consequently, it found that the appeal should not have been heard by the BC Supreme Court in the first instance, and denied leave to appeal to the Court of Appeal. (*Hegel v. British Columbia (Ministry of Forests and Forest Appeals Commission)*, 2009 BCCA 527).

The Appellants disagreed with this decision and applied to vary this denial of leave. This time they were successful in part. A panel of three Court of Appeal judges granted leave to appeal on two questions of law: (1) were the Appellants entitled to rely on the dimensions in the original Crown grant; and (2) did the Commission treat due diligence and mistake of fact as equivalent defences (see *Hegel v. British Columbia (Ministry of Forests and Forest Appeals Commission)*, 2010 BCCA 289).

The appeal was heard in October of 2011 and the Court's reasons for judgment released shortly thereafter. The Court of Appeal found that the Appellants were not entitled to rely on the dimensions in the original Crown grant. It found that sections 1 and 2 of the *Land Survey Act* provide that the survey markers (monuments) establish the boundaries of land, not what is described in the title documents. Regarding the defences, the Court found that the Commission had considered the defences of due diligence and mistake of fact separately, and nothing in the Commission's decision indicated that the Commission treated the defences as equivalent.

The appeal was dismissed, and the Commission's 2007 decision was upheld.

Supreme Court of Canada

During this reporting period, there were no judgments released by the Court on appeals of Commission decisions.

APPENDIX I

Legislation and Regulations

Reproduced below are the sections of the *Code* and the *Administrative Review and Appeal Procedure Regulation* which establish the Commission and set out the general powers and procedures that apply to most appeals.

Also included are the appeal provisions contained in each of the statutes which provide for an appeal to the Commission from certain decisions of government officials: the *Forest and Range Practices Act*, the *Forest Act*, the *Range Act*, and the *Wildfire Act*. Also included are the *Private Managed Forest Land Act* and the *Private Managed Forest Land Regulation*, which establish the particular powers and procedures of the Commission in relation to appeals under that enactment.

The legislation contained in this report is the legislation in effect at the end of the reporting period (December 31, 2011). Please note that legislation can change at any time. An updated version of the legislation may be obtained from Crown Publications.

Forest Practices Code of British Columbia Act

Part 6

COMPLIANCE AND ENFORCEMENT

Division 4 – Administrative Review and Appeals

Part 6 of the *Forest and Range Practice Act* applies

130.1 Part 6 of the *Forest and Range Practices Act* applies to this Act and the regulations under this Act, unless the context indicates otherwise.

Appeal

131 (1) To initiate an appeal under section 82 or 83 of the Forest and Range Practices Act, the person referred to in section 82(1) of that Act, or the board under section 83(1) of that Act, no later than 3 weeks after the latest to occur of

(a) the original decision,

(b) any correction under section 79 of that Act, and

(c) any review under section 80 or 81 of that Act,

must deliver to the commission

(d) a notice of appeal,

(e) a copy of the original decision, and

(f) a copy of any decision respecting a correction or review.

(2) [Repealed 2003-55-94.]

(3) The person or board bringing the appeal must ensure the notice of appeal given under subsection (1) complies with the content requirements of the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

(5) If the person or the board does not deliver the notice of appeal within the time specified, the person or board loses the right to an appeal.

(6) On receipt of the notice of appeal, the commission must, in accordance with the regulations, give a copy of the notice of appeal to the ministers and

(a) to the board, if the notice was delivered

(i) by the person who is the subject of the determination, or

(ii) for an appeal of a failure to make a determination, by the person who would be the subject of a determination, if made,

(b) to the person who is the subject of the determination, if the notice was delivered by the board, or

(c) for an appeal of a failure to make a determination, to the person who would be the subject of a determination, if made, if the board delivered the notice.

(7) The government, the board, if it so requests, and the person who is the subject of the determination or would be the subject of a determination, if made, are parties to the appeal.

(8) At any stage of an appeal the commission or a member of it may direct that a person who may be affected by the appeal be added as a party to the appeal.

(9) After a notice of appeal is delivered under subsection (1), the parties must disclose the facts and law on which they will rely at the appeal, if required by the regulations and in accordance with the regulations.

(10) The commission, after receiving a notice of appeal, must

(a) promptly give the parties to an appeal a hearing, or

(b) hold a hearing within the prescribed period, if any.

(11) Despite subsection (10), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts or law under subsection (9) or (14), the commission need not hold a hearing within the prescribed period referred to in subsection (10), but must hold a hearing within the prescribed period after a notice of appeal that does comply with the content requirements of the regulations is delivered to the commission, or the facts and law are disclosed as required under subsection (9) or (14).

(12) A party may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under section 129,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(13) The commission may invite or permit a person to take part in a hearing as an intervenor.

(14) An intervenor may take part in a hearing to the extent permitted by the commission and must disclose the facts and law on which the intervenor will rely at the appeal, if required

by the regulations and in accordance with the regulations.

(15) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Repealed

131.1 [Repealed 2003-55-95]

Order for written submissions

132 (1) The commission or a member of it may order the parties to deliver written submissions.

(2) If the party that initiated the appeal fails to deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that every party to the appeal has the opportunity to review written submissions from the other parties and an opportunity to rebut the written submissions.

Interim orders

133 The commission or a member of it may make an interim order in an appeal.

Open hearings

134 Hearings of the commission must be open to the public.

Witnesses

135 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

136 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

137 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

relevant to the subject matter of the appeal and may act on the evidence.

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court by reason of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

Repealed

138 [Repealed 2003-55-95.]

Decision of commission

139 (1) The commission must make a decision promptly after the hearing, and must give copies of the decision to the ministers, the parties and any intervenors.

(2) On the request of any of the ministers or a party, the commission must provide written reasons for the decision.

(3) The commission must make a decision within the prescribed period, if any.

Order for compliance

140 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission or a party may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to court

141 (1) The minister or a party to the appeal, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision or order of the commission be stayed in whole or in part.

(3) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 9

FOREST APPEALS COMMISSION

Forest Appeals Commission continued

194 (1) The Forest Appeals Commission is continued.

(1.1) The commission is to hear appeals under

(a) Division 4 of Part 6, and

(b) the *Forest Act*, the *Private Managed Forest Land Act* and the *Range Act* and, in relation to appeals under those Acts, the commission has the powers given to it by those Acts.

(2) The commission consists of the following members appointed by the Lieutenant Governor in Council after a merit based process:

(a) a member designated as the chair;

(b) one or more members designated as vice chairs after consultation with the chair;

(c) other members appointed after consultation with the chair.

(3) The Administrative Tribunals Appointment and Administration Act applies to the commission.

(4) to (6) [Repealed 2003-47-32.]

Organization of the commission

195 (1) The chair may organize the commission into panels, each comprised of one or more members.

(2) The members of the commission may sit

(a) as a commission, or

(b) as a panel of the commission

and 2 or more panels may sit at the same time.

(3) If members of the commission sit as a panel,

(a) the panel has the jurisdiction of, and may exercise and perform the powers and duties of, the commission, and

(b) an order, decision or action of the panel is an order, decision or action of the commission.

Commission staff

196 (1) Employees necessary to carry out the powers and duties of the commission may be appointed under the *Public Service Act*.

(2) In accordance with the regulations, the commission may engage or retain specialists or consultants that the commission considers necessary to carry out the powers

and duties of the office and may determine their remuneration.

(3) The *Public Service Act* does not apply to the retention, engagement or remuneration of specialists or consultants retained under subsection (2).

No oral hearing as of right

196.1 A person is not entitled to an oral hearing before the commission.

Delegation of powers

196.2 (1) The chair may in writing delegate to a person or class of persons any of the commission's powers or duties under this Act, except the power

(a) of delegation under this section, or

(b) to make a report under this Act.

(2) A delegation under this section is revocable and does not prevent the commission exercising a delegated power.

(3) A delegation may be made subject to terms the chair considers appropriate.

(4) If the chair makes a delegation and then ceases to hold office, the delegation continues in effect as long as the delegate continues in office or until revoked by a succeeding chair.

(5) A person purporting to exercise a power of the commission by virtue of a delegation under this section must, when requested to do so, produce evidence of his or her authority to exercise the power.

Mandate of the commission

197 (1) In accordance with the regulations, the commission must

(a) hear appeals under Division 4 of Part 6 and under the *Forest Act* and the *Range Act*,

(b) provide

(i) the ministers with an annual evaluation of the manner in which reviews and appeals under this Act are functioning and identify problems that may have arisen under their provisions, and

(ii) the minister responsible for the administration of the *Ministry of Forests and Range Act* with an annual evaluation of the manner in which reviews and appeals under the *Forest Act* and the *Range Act* are functioning and identify problems that may have arisen under their provisions, and

(c) annually, and at other times it considers appropriate, make recommendations

(i) to the ministers concerning the need for amendments to this Act and the regulations respecting reviews and appeals,

(ii) to the minister responsible for the administration of the *Ministry of Forests and Range Act* concerning the need for amendments to the *Forest Act* and the *Range Act* and related regulations respecting reviews and appeals under those Acts, and

(d) perform other functions required by the regulations.

(2) The chair must give to the ministers an annual report concerning the commission's activities.

(3) The ministers must promptly lay the report before the Legislative Assembly.

Determinations stayed until proceedings concluded

78 (1) A determination that may be reviewed under section 80 or appealed under section 82 is stayed until the person who is the subject of the determination has no further right to have the determination reviewed or appealed.

(2) Despite subsection (1), the minister may order that a determination, other than a determination to levy an administrative penalty under section 71 or 74(3)(d) is not stayed or is stayed subject to conditions, on being satisfied that a stay or a stay without those conditions, as the case may be, would be contrary to the public interest.

(3) Despite subsection (1), a determination is not stayed if the determination is made under prescribed sections or for prescribed purposes.

Correction of a determination

79 (1) Within 15 days after a determination is made under section 16, 26(2), 27(2), 32(2), 37, 51(7), 54(2), 57(4), 66, 71, 74 or 77 of this Act, the person who made the determination may

(a) correct a typographical, an arithmetical or another similar error in the determination, and

(b) [Repealed 2003-55-37.]

(c) correct an obvious error or omission in the determination.

(2) The correction does not take effect until the date on which the person who is the subject of the determination is notified of it under subsection (4).

(3) The discretion conferred under subsection (1)

(a) is to be exercised in the same manner as the determination affected by it, and

(b) is exercisable with or without a hearing and

(i) on the initiative of the person who made the determination, or

(ii) at the request of the person who is the subject of the determination.

(4) The person who corrected a determination under this section must notify the person who is the subject of the determination.

Review of a determination

80 (1) Subject to subsection (2), at the request of a person who is the subject of a determination under section 16, 20(3), 26(2), 27(2), 32(2), 37, 38(5), 39, 51(7), 54(2), 57(4), 66, 71, 74, 77, 77.1, 97(3), 107, 108, 112(1)(a) or 155(2) of this Act, the person who made the determination, or another person employed in the ministry and designated in writing by the minister must review the determination, but only if satisfied that there is evidence that was not available at the time of the original determination.

(2) On a review required under subsection (1) the person conducting the review may consider only

(a) evidence that was not available at the time of the original determination, and

(b) the record pertaining to the original determination.

(3) To obtain a review of a determination under subsection (1) the person must request the review not later than 3 weeks after the date the notice of determination was given to the person.

(4) The minister may extend the time limit for requiring a review under this section before or after its expiry.

(5) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the determination under the review.

Board may require review of a determination

81 (1) If the board first receives the consent of the person who is the subject of a determination under section 16, 37, 71 or 74 of this Act, the board may require a review of the determination by the person who made the determination, or another person employed in the ministry and designated in writing by the minister.

(2) To obtain a review of a determination under subsection (1), the board must require the review not later than 3 weeks after the date the notice of determination was given to the person.

(3) The minister may extend the time limit for requiring a review under this section before or after its expiry.

(4) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the determination under the review.

Appeal to the commission by a person who is the subject of a determination

82 (1) The person who is the subject of a determination referred to in section 80, other than a determination made under section 77.1, may appeal to the commission either of the following, but not both:

(a) the determination;

(b) a decision made after completion of a review of the determination.

(2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Appeal to the commission by the board

83 (1) The board may appeal to the commission either of the following, but not both:

(a) a determination referred to in section 81;

(b) a decision made after completion of a review of the determination.

(2) The board may apply to the commission for an order under section 84(2) if

(a) the minister authorized under section 71 or 74 of this Act to make a determination has not done so, and

(b) a prescribed period has elapsed after the facts relevant to the determination first came to the knowledge of the official or the minister.

(3) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under subsection (1) or an application under subsection (2).

Powers of the commission

84 (1) On an appeal

(a) by a person under section 82(1), or

(b) by the board under section 83(1),

the commission may

(c) consider the findings of the person who made the determination or decision, and

(d) either

(i) confirm, vary or rescind the determination or decision, or

(ii) with or without directions, refer the matter back to the person who made the determination or decision, for reconsideration.

(2) On an application under section 83 by the board the commission may order the official or minister referred to in section 83(2) to make a determination as authorized under the applicable provision that is referred to in section 83(2)(a).

(3) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.

(4) After filing in the court registry, an order under subsection (3) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

Forest Act

Part 12

REVIEWS, APPEALS, REGULATIONS, PENALTIES

Division 2 – Appeals

Determinations that may be appealed

146 (1) Subject to subsection (3), an appeal may be made to the Forest Appeals Commission from a determination, order or decision that was the subject of a review required under Division 1 of this Part.

(2) An appeal may be made to the Forest Appeals Commission from

(a) a determination, order or decision of the chief forester, under section 60.6, 68, 70(2), or 112(1),

(b) a determination of an employee of the ministry under section 105(1), and

(c) an order of the minister under section 75.95(2).

(3) No appeal may be made under subsection (1) unless the determination, order or decision has first been reviewed under Division 1 of this Part.

(4) If a determination, order or decision referred to in subsection (1) is varied by the person conducting the review, the appeal to the commission is from the determination, order or decision as varied under section 145.

(5) If this Act gives a right of appeal, this Division applies to the appeal.

(6) For the purpose of subsection (2), a redetermination or variation of stumpage rates under section 105(1) is considered to be a determination.

Notice of appeal

147 (1) If a determination, order or decision referred to in section 146(1) or (2) is made, the person

(a) in respect of whom it is made, or

(b) in respect of whose agreement it is made

may appeal the determination, order or decision by

(c) serving a notice of appeal on the commission

(i) in the case of a determination, order or decision that has been reviewed, not later than 3 weeks after the date the written decision is served on the person under section 145(3), and

(ii) in the case of a determination, order or decision that has not been reviewed, not later than 3 weeks after that date the determination, order or decision is served on the person under the provisions referred to in section 146(2), and

(d) enclosing a copy of the determination, order or decision appealed from.

(2) If the appeal is from a determination, order or decision as varied under section 145, the appellant must include a copy of the review decision with the notice of appeal served under subsection (1).

(3) The appellant must ensure that the notice of appeal served under subsection (1) complies with the content requirements of the regulations.

(3.1) After the notice of appeal is served under subsection (1), the appellant and the government must disclose the facts and law on which the appellant or government will rely at the appeal if required by the regulations and in accordance with the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

(5) A person who does not serve the notice of appeal within the time required under subsection (1) or (4) loses the right to an appeal.

Appeal

148 (1) The commission, after receiving the notice of appeal, must

(a) promptly hold a hearing, or

(b) hold a hearing within the prescribed period, if any.

(2) Despite subsection (1), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts and law required under section 147(3.1), the commission need not hold a hearing within the prescribed period referred to in subsection (1) of this section, but must hold a hearing within the prescribed period after service of a notice of appeal that does comply with the content requirements of the regulations, or the facts and law are disclosed as required under section 147(3.1).

(3) Only the appellant and the government are parties to the appeal.

(4) The parties may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under Division 1 of this Part,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(5) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Order for written submissions

148.1 (1) The commission or a member of it may order the parties to an appeal to deliver written submissions.

(2) If the appellant does not deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that each party to the appeal has the opportunity to review written submissions from the other party and an opportunity to rebut the written submissions.

Interim orders

148.2 The commission or a member of it may make an interim order in an appeal.

Open hearings

148.3 Hearings of the commission are open to the public.

Witnesses

148.4 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

148.5 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

148.6 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

relevant to the subject matter of the appeal and may act on the evidence.

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court because of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

Powers of commission

149 (1) On an appeal, whether or not the person who conducted the review confirmed, varied or rescinded the determination, order or decision being appealed, the commission may consider the findings of

(a) the person who made the initial determination, order or decision, and

(b) the person who conducted the review.

(2) On an appeal, the commission may

(a) confirm, vary or rescind the determination, order or decision, or

(b) refer the matter back to the person who made the initial determination, order or decision with or without directions.

(3) If the commission decides an appeal of a determination made under section 105, the commission must, in deciding the appeal, apply the policies and procedures approved by the minister under section 105 that were in effect at the time of the initial determination.

(4) The commission may order that a party pay any or all of the actual costs in respect of the appeal.

(5) After filing in the court registry, an order under subsection (4) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

(6) Unless the minister orders otherwise, an appeal under this Division does not operate as a stay or suspend the operation of the determination, order or decision under appeal.

Decision of commission

149.1 (1) The commission must make a decision promptly after the hearing and serve copies of the decision on the appellant and the minister.

(2) On request of the appellant or the minister, the commission must provide written reasons for the decision.

(3) The commission must serve a decision within the prescribed period, if any.

Order for compliance

149.2 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission, minister or appellant may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to the courts

150 (1) The appellant or the minister, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision of the commission be stayed in whole or in part.

(3) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 6 of the *Forest and Range Practices Act* applies

167.3 (1) Divisions 1 to 4 of Part 6 of the *Forest and Range Practices Act* apply to this Act and the regulations under this Act, unless the context indicates otherwise.

(2) Without limiting subsection (1), sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under the *Forest and Range Practices Act* in respect of a contravention of this Act or the regulations under this Act.

Range Act

Part 3

COMPLIANCE AND ENFORCEMENT

Division 3 – Reviews and Appeals

Reviews

69 (1) Subject to subsection (2), at the request of a person who is the subject of, or whose licence or permit is affected by,

(a) an order of a forest officer under section 60(1),

(b) an order of a district manager under section 36(1) or (2), 49(1), 50(1), 55, 60(1), 62(1)(b) or 63(1),

(c) a decision of the district manager referred to in section 25(5) or 50(4), or

(d) amendments under section 47 or 48,

the person who made the order or decision or who prepared the amendments, or another person employed in the ministry and designated in writing by the minister, must review the order, decision or amendments, but only if satisfied that there is evidence that was not available at the time of the original order, decision or amendments.

(2) On a review referred to in subsection (1), only

(a) evidence that was not available at the time of the original order, decision or amendments, and

(b) the record pertaining to the original order, decision or amendments

may be considered.

(3) To obtain a review referred to in subsection (1), the person who is the subject of, or whose licence or permit is affected by, the order, decision or amendments must request the review not later than 21 days after the date the notice of the order, decision or amendments was delivered to the person.

(4) The minister may extend the time limit in subsection (3) before or after its expiry.

(5) The person conducting a review referred to in subsection (1) has the same discretion to

(a) make an order referred to in subsection (1)(a) or (b),

(b) make a decision referred to in subsection (1)(c), or

(c) prepare amendments referred to in subsection (1)(d)

that the person who made the original order or decision or prepared the original amendments had at the time of the original order, decision or amendments.

(6) After the preparation of amendments under subsection (5)(c) to a licence or permit, and on delivery of the particulars of the amendments to the holder of the licence or permit, the licence or permit, as the case may be, is deemed to be amended to include the amendments.

Appeals to the commission

70 (1) The person who is the subject of, or whose licence or permit is affected by,

(a) an order,

(b) a decision, or

(c) amendments

referred to in section 69(1) may appeal to the commission either of the following, but not both:

(d) the order, decision or amendments;

(e) a decision made after completion of a review of the order, decision or amendments.

(2) An applicant referred to in section 15(2) may appeal to the commission an order of the minister made under that provision.

(3) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Powers of the commission

71 (1) On an appeal under section 70, the commission may

(a) consider the findings of the person who made the order or decision or who prepared the amendments, and

(b) either

(i) confirm, vary or rescind the order, decision or amendments, or

(ii) with or without directions, refer the matter back to that person for reconsideration.

(2) If an appeal referred to in subsection (1) results in amendments to a licence or permit, the licence or permit, as the case may be, is deemed to be amended to include the amendments as soon as the particulars of the amendments have been delivered to the holder of the licence or permit.

(3) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.

(4) After a certified copy of an order under subsection (3) is filed with the Supreme Court, the order has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

Review or appeal not a stay

72 Unless the minister orders otherwise, a review or an appeal under this Act does not operate as a stay or suspend the operation of the order, decision or amendments being reviewed or appealed.

Wildfire Act

Part 3

ADMINISTRATIVE REMEDIES AND COST RECOVERY

Division 3 – Corrections, Reviews and Appeals

Order stayed until proceedings concluded

36 (1) An order that may be reviewed under section 37 or appealed under section 39 is stayed until the person who is the subject of the order has no further right to have the order reviewed or appealed.

(2) Despite subsection (1), the minister may order that an order, other than an order levying an administrative penalty under section 27 or 28(3)(d) is not stayed on being satisfied that a stay or a stay without those conditions, as the case may be, would be contrary to the public interest.

(3) Despite subsection (1), an order is not stayed if the order is made under section 34.

Review of an order

37 (1) Subject to subsection (2), at the request of a person who is the subject of an order under section 7(3), 17(3.1), 25, 26, 27, 28(1) or (3)(d) or 34, the person who made the order, or another person employed in the ministry and designated in writing by the minister, must review the order, but only if satisfied that there is evidence that was not available at the time of the original order.

(2) On a review referred to in subsection (1), only

(a) evidence that was not available at the time of the original order, and

(b) the record pertaining to the original order

may be considered.

(3) To obtain a review referred to in subsection (1), the person who is the subject of the order must request the review not later than 3 weeks after the date the notice of order was given to the person.

(4) The minister may extend the time limit in subsection (3) before or after the time limit's expiry.

(5) The person conducting a review referred to in subsection (1) has the same discretion to make a decision that the original decision maker had at the time of the original order.

Board may require review of an order

38 (1) If the board first receives the consent of the person who is the subject of an order referred to in section 37(1), the board may require a review of the order by the person who made the order, or another person employed in the ministry and designated in writing by the minister.

(2) To obtain a review of an order under subsection (1), the board must require the review not later than 3 weeks after the date the notice of the order was given to the person who is the subject of the order.

(3) The minister may extend the time limit for requiring a review under this section before or after the time limit's expiry.

(4) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the order under review.

Appeal to the commission from an order

39 (1) The person who is the subject of an order referred to in section 37(1) may appeal to the commission from either of the following, but not both:

(a) the order;

(b) a decision made after completion of a review of the order.

(2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Appeal to the commission by the board

40 (1) The board may appeal to the commission from either of the following, but not both:

(a) an order referred to in section 37;

(b) a decision made after completion of a review of the order.

(2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Powers of commission

41 (1) On an appeal under section 39 by a person or under section 40 by the board, the commission may

(a) consider the findings of the decision maker who made the order, and

(b) either

(i) confirm, vary or rescind the order, or

(ii) with or without directions, refer the matter back to the decision maker who made the order, for reconsideration.

(2) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.

(3) After the period to request an appeal to the Supreme Court under the *Forest Practices Code of British Columbia Act* has passed, the minister may file a certified copy of the decision of the commission with the Supreme Court.

(4) A certified copy of a decision filed under subsection (3) has the same force and effect as an order of the court for the recovery of a debt in the amount stated in the decision, against the person named in the decision, and all proceedings may be taken as if the decision were an order of the court.

This regulation applies to appeals under the Code, *Forest and Range Practices Act*, the *Forest Act*, the *Range Act* and the *Wildfire Act*.

Administrative Review and Appeal Procedure Regulation
(B.C. Reg. 12/04)

Part 1

DEFINITIONS

1 In this regulation:

"appellant" means

(a) for a *Forest Act* appeal, the person that initiates an appeal under section 147(1) of that Act,

(b) for a *Range Act* appeal, the person that initiates an appeal under section 70(1) of that Act,

(c) for a *Forest and Range Practices Act* appeal, the person that initiates an appeal under section 82(1) of that Act, and includes the board if the board initiates an appeal under section 83(1) of the Act, or

(d) for a *Wildfire Act* appeal, the person that initiates an appeal under section 39(1) of that Act, and includes the board if the board initiates an appeal under section 40(1) of that Act;

Part 3

FOREST APPEALS COMMISSION PROCEDURE

Exemption from time specified to appeal a determination

16 (1) In respect of an appeal under section 83 of the *Forest and Range Practices Act*, the board is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission

(a) a notice of appeal,

(b) a copy of the original decision, and

(c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

(d) the original decision,

(e) any correction under section 79 of the *Forest and Range Practices Act*, and

(f) any review under section 80 or 81 of the *Forest and Range Practices Act*

if the board delivers to the commission the documents described in paragraphs (a) to (c) within 60 days after the latest to occur of the events described in paragraphs (d) to (f).

(2) In respect of an appeal under section 40 of the *Wildfire Act*, the board is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission

(a) a notice of appeal,

(b) a copy of the original decision, and

(c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

(d) the original decision,

(e) any correction under section 35 of the *Wildfire Act*, and

(f) any review under section 37 or 38 of the *Wildfire Act*

if the board delivers to the commission the documents described in paragraphs (a) to (c) within 60 days after the latest to occur of the events described in paragraphs (d) to (f).

(3) In respect of an appeal under section 70(1) of the *Range Act*, section 82 (1) of the *Forest and Range Practices Act* or section 39(1) of

the *Wildfire Act*, a person whose request for a review is denied by the reviewer for the reason described in subsection (4) is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission

(a) a notice of appeal,

(b) a copy of the original decision, and

(c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

(d) the original decision, or

(e) any correction under the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*

if the appellant delivers to the commission the documents described in paragraphs (a) to (c) within 21 days after the appellant is given notice by the reviewer that the appellant's request for the review is denied for the reason described in subsection (4).

(4) The reason referred to in subsection (3) is that the reviewer is not satisfied as to the existence of evidence not available at the time of the original determination, order, decision or amendment.

[am. B.C. Reg. 83/2006, s. 9.]

Prescribed period for board to apply for order

17 The prescribed period for the purpose of section 83(2)(b) of the *Forest and Range Practices Act* is 6 months.

Notice of appeal

18 The notice of appeal referred to in section 147(1) of the *Forest Act* and section 131(1) of the *Forest Practices Code of British Columbia Act*, must be signed by, or on behalf of, the appellant and must contain all of the following information:

(a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;

(b) the address for giving a document to, or serving a document on, the appellant;

(c) the grounds for appeal;

(d) a statement describing the relief requested.

[am. B.C. Reg. 83/2006, s. 10.]

Deficient notice of appeal

19 (1) If a notice of appeal does not comply with section 18, the commission may invite the appellant to submit further material remedying the deficiencies within a period specified in a written notice of deficiencies, by

(a) serving the written notice of deficiencies on the appellant, if the appeal is under the *Forest Act* or

(b) giving the written notice of deficiencies to the appellant, if the appeal is under the *Range Act*, *Forest and Range Practices Act* or the *Wildfire Act*.

(2) If the commission serves or gives a notice of deficiencies under subsection (1), the appeal that is the subject of the notice of appeal may proceed only after the submission to the commission of further material remedying the deficiencies.

[am. B.C. Reg. 83/2006, s. 11.]

Notification of parties following receipt of notice of appeal

20 The commission must acknowledge in writing any notice of appeal, and

(a) in the case of an appeal under the *Forest Act*, serve a copy of the notice of appeal on the deputy minister of the minister responsible for the administration of

those portions of the *Forest Act* for which the Minister of Finance is not responsible,

(a.1) in the case of an appeal under the *Range Act*, give a copy of the notice of appeal to the minister,

(b) in the case of an appeal under the *Forest and Range Practices Act*, give a copy of the notice of appeal to

(i) the minister, and

(ii) either

(A) the board, if the notice was delivered by the person who is the subject of the determination, or

(B) the person who is the subject of the determination, if the notice was delivered by the board, and

(c) in the case of an appeal under the *Wildfire Act*, give a copy of the notice of appeal to

(i) the minister, and

(ii) either

(A) the board, if the notice was delivered by the person who is the subject of the order, or

(B) the person who is the subject of the order, if the notice was delivered by the board.

[am. B.C. Regs. 83/2006, s. 12; 4/2010, s. 2.]

Procedure following receipt of notice of appeal

21 Within 30 days after receipt of the notice of appeal, the commission must

(a) determine whether the appeal is to be considered by members of the commission sitting as a commission or by members of the commission sitting as a panel of the commission,

(b) designate the panel members if the commission determines that the appeal is to be considered by a panel,

(c) set the date, time and location of the hearing, and

(d) give notice of hearing to the parties if the appeal is under the *Range Act*, *Forest and Range Practices Act* or the *Wildfire Act*, or serve notice of hearing on the parties if the appeal is under the *Forest Act*.

[en. B.C. Reg. 83/2006, s. 13.]

Panel chair determined

22 For an appeal that is to be considered by a panel of the commission, the panel chair is determined as follows:

(a) if the chair of the commission is on the panel, he or she is the panel chair;

(b) if the chair of the commission is not on the panel but a vice chair of the commission is, the vice chair is the panel chair;

(c) if neither the chair nor a vice chair of the commission is on the panel, the commission must designate one of the panel members to be the panel chair.

Additional parties to an appeal

23 (1) If the board is added as a party to an appeal under section 131(7) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

(2) If a party is added to the appeal under section 131(8) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

Intervenors

24 (1) If an intervenor is invited or permitted to take part in the hearing of an appeal under section 131(13) of the *Forest Practices Code of British Columbia Act*, the commission must give the intervenor a written notice specifying the extent to which the intervenor will be permitted to take part.

(2) Promptly after giving notice under subsection (1), the commission must give the parties to the appeal written notice

(a) stating that the intervenor has been invited or permitted under section 131(13) of the *Forest Practices Code of British Columbia Act* to take part in the hearing, and

(b) specifying the extent to which the intervenor will be permitted to participate.

Transcripts

25 On application to the commission, a transcript of any proceedings before the commission or the panel of the commission must be prepared at the cost of the person requesting it or, if there is more than one applicant for the transcript, proportionately by all of the applicants.

Prescribed period for appeal decision under the *Forest Act*

26 The prescribed period for the purposes of section 149.1(3) of the *Forest Act* is 42 days after conclusion of the hearing.

Part 4

ANNUAL REPORT OF FOREST APPEALS COMMISSION

Content

27 (1) By April 30 of each year, the chair of the commission must submit the annual report for the immediately preceding calendar year required by section 197(2) of the *Forest Practices Code of British Columbia Act*.

(2) The annual report referred to in subsection (1) must contain

(a) the number of appeals initiated under the *Forest Act*, the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*, during the year,

(b) the number of appeals completed under the *Forest Act*, the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*, during the year,

(c) the resources used in hearing the appeals,

(d) a summary of the results of the appeals completed during the year,

(e) the annual evaluation referred to in section 197(1)(b) of the *Forest Practices Code of British Columbia Act*, and

(f) any recommendations referred to in section 197(1)(c) of the *Forest Practices Code of British Columbia Act*.

[am. B.C. Reg. 83/2006, s. 14.]

Part 4

COMPLIANCE AND ENFORCEMENT

Division 2 – Administrative Remedies

Appeal to commission

33 (1) A person who is the subject of an order, a decision or a determination of the council under section 26(1), 27(1) and (2), 30, 31(1) or 32 may appeal the order, decision or determination to the commission in accordance with the regulations.

(2) An order, a decision or a determination that may be appealed under this section, other than a stop work order, is stayed until the person who is the subject of the order, decision or determination has no further right to have the order, decision or determination appealed.

(3) The commission must conduct an appeal in accordance with this section and the regulations.

(4) The appellant and the council are parties to the appeal and may be represented by counsel.

(5) At any stage of an appeal, the commission or a member of it may direct that a person who may be directly affected by the appeal be added as a party to the appeal.

(6) The commission may invite or permit any person who may be materially affected by the outcome of an appeal to take part in the appeal as an intervenor in the manner and to the extent permitted or ordered by the commission.

(7) The commission or a member of it may order the parties to an appeal to deliver written submissions.

(8) If the appellant does not deliver a written submission ordered under subsection (7) within the time specified in the order or the regulations, the commission may dismiss the appeal.

(9) The commission must ensure that each party to the appeal has the opportunity to review written submissions from the other party or any intervenor and an opportunity to rebut the written submissions.

(10) The commission or a member of it may make an interim order in an appeal.

(11) Hearings of the commission are open to the public.

(12) The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

(13) The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in the person's custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

(14) The commission may retain, call and hear an expert witness.

(15) An appeal under this section to the commission is a new hearing and at the conclusion of the hearing, the commission may

(a) by order, confirm, vary or rescind the order, decision or determination,

(b) refer the matter back to the council or authorized person for reconsideration with or without directions,

(c) order that a party or intervenor pay another party or intervenor any or all of the actual costs in respect of the appeal, or

(d) make any other order the commission considers appropriate.

(16) An order under subsection (15) that is filed in the court registry has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if the order were an order of the court.

Appeal to court

34 (1) A party to the appeal before the commission may appeal, within 3 weeks of being given the decision of the commission in writing and by application to the Supreme Court, the decision of the commission on a question of law or jurisdiction.

(2) After an application is brought to the Supreme Court, a judge may order, on terms he or she considers appropriate, that all or part of the decision of the commission be stayed.

(3) An appeal from a decision of the Supreme Court lies with the Court of Appeal with leave of a justice of the Court of Appeal.

Private Managed Forest Land Regulation

(B.C. Reg. 371/04)

Notice of appeal

9 (1) A person who, under section 33(1) of the Act, may appeal an order, decision or determination to the commission must submit a notice of appeal to the commission that is signed by, or on behalf of, the appellant and contains all of the following:

(a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;

(b) the address for service of the appellant;

(c) the grounds for appeal;

(d) the relief requested.

(2) The appellant must deliver the notice of appeal to the commission not later than 3 weeks after the later of the date of

(a) the decision of the council under section 32(2) of the Act, and

(b) the order, decision or determination referred to in section 33(1) of the Act.

(3) Before or after the time limit in subsection (2) expires, the commission may extend it.

(4) A person who does not deliver a notice of appeal within the time specified loses the right to an appeal.

Deficient notice of appeal

10 (1) If a notice of appeal does not comply with section 9 the commission may deliver a written notice of deficiencies to the appellant, inviting the appellant, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) If the commission delivers a notice under subsection (1), the appeal may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, and

(b) the submission to the commission of further material remedying the deficiencies.

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